

**Exploring the links between knowledge, power and silence
in New Zealand's discursive formation
on therapeutic sexual exploitation.**

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Abstract

In this dissertation, Foucault's methodologies, archaeology and genealogy, are used to explore the links between silence, knowledge and power in the area of therapeutic sexual exploitation. Underpinning this task is Foucault's theoretical assumption that knowledge is not scientifically constructed through objective and rational methods. Knowledge, under Foucault's theoretical framework, is influenced by the more obscure conditions of possibility which affect power relations and, therefore, power-knowledge. Therefore, New Zealand's scientific discourse around therapeutic sexual exploitation is analysed by moving between the discursive and the extra-discursive. This is undertaken to highlight the more obscure conditions of possibility which may have affected the political construction of knowledge and its material effects in the area of therapeutic sexual exploitation.

New Zealand's academic discourse on therapeutic sexual exploitation is examined with reference to the social conditions which have influenced the origins of counselling and psychotherapy in New Zealand. This includes an exploration of the links between counselling and psychotherapy to other New Zealand based psy-professions. In particular, an investigation is conducted as to how disciplinary procedures have been applied to those connected to, and affected by, therapeutic sexual exploitation. This, however, is studied by locating New Zealand's discourse within an international discourse on therapeutic sexual exploitation. This wider lens shows how New Zealand's discourse around therapeutic sexual exploitation, as other countries' discourses on this matter, has developed in response to local social conditions and changing power relations.

Through this broader analysis of New Zealand's discursive formation on therapeutic sexual exploitation one can see the interplay between silence, knowledge and power, and its material effects on the lives on people. This dissertation highlights not only what knowledge-power might be restricting, but also what it might be producing in the area of therapeutic sexual exploitation, the impacts of which, it will be argued, extends well beyond the particular domain under examination.

Introduction

Therapeutic sexual exploitation is an oxymoron. However, I have created that term for the purposes of this dissertation to define sexual or sexualised relations that can, and have, occurred within therapeutic environments. The word exploitation has been deliberately chosen to capture the special nature of trust inherent in therapeutic environments. Therapeutic environments are places in which clients of service are encouraged to open up to their emotional vulnerabilities on the understanding that in doing so such opening up will assist them with some sort of healing. It is assumed that in such a process that a therapeutic practitioner will act ethically, and with due diligence, to ensure no harm will come to their client of service while they are in this exposed emotional state. For a therapeutic practitioner, or someone else within the therapeutic setting, to sexually take advantage of a client's emotional vulnerability is exploitative, and one would think would breach the ethical standards of safe, professional practice.

'Clients of service' is a generic term that is used to describe any person or persons who have paid for a professional service from a therapeutic practitioner and may include individuals, couples or groups engaged in therapy/counselling, training or supervision, in private or group settings. Furthermore, while there are a number of professions that may, in the course of their professional business, engage in therapeutic activities with clients of service, the primary focus within this dissertation is on the discursive formation of therapeutic sexual exploitation as it relates to the New Zealand professions of counselling and psychotherapy. While these two professions are the focus on this study it is acknowledged that there are many different orientations and sub-groupings within these two professional categories. Given the space restrictions of the dissertation it has been necessary to limit close historical analysis to four specific New Zealand based therapeutic/counselling organisations.¹

Centrepoint is likely to be New Zealand's most well publicised case connected to therapeutic sexual exploitation. Centrepoint was a therapeutic community that was established in Albany, New Zealand, in 1978. In the early 1990s it made national news. It appeared that within Centrepoint there had been a culture where it was acceptable to have multiple sexual relationships between adults. It also appeared to have been acceptable

¹ Furthermore, the literature review focussed on New Zealand counselling and psychotherapy texts that were, for the most part, accessible through specifically identified New Zealand based counselling or therapy journals. It may be that a more comprehensive search will reveal New Zealand based therapeutic practitioners publishing on this matter in international journals.

within this therapeutic community for Mr Potter, the leader of the therapeutic community, and for other adults, to have sexual relations with children. These activities seemed to have been justified by a philosophy that sexual exploration between adults and between adults and children within a therapeutic environment were natural and desirable (Hume, 2010).

This dissertation is not focussed on Centrepont or the people connected to those events, although more recent reports of Centrepont's history will be relevant for a later discussion. This research is primarily interested in learning more about *history of reason* in New Zealand's discursive formation on therapeutic sexual exploitation as it relates to contemporary times. Under what conditions has New Zealand knowledge been created and applied to the area of therapeutic sexual exploitation? Two of Michel Foucault's research methodologies, archaeology and genealogy are useful in exploring this question. To understand discourse, Foucault would argue, one would have to understand the interplay between knowledge, power and silence (Foucault, 1969/1972). The study of discourse is not the study of language and texts, per se. It is the study of language and texts so one can identify the laws and rules as to what have appeared to have been 'sayable' and 'unsayable' in a given period of time and in a given society. The extra-discursive, is the discourse on a given topic which stands more obscured from the formal discourse in a given domain. *It is in studying both of these elements that one is studying a discursive formation* (Foucault, 1969/1972). Therefore, when applying Foucault's methods to New Zealand's discursive framework on therapeutic sexual exploitation one has to work within textual analyses on therapeutic sexual exploitation to note the silences, gaps, contradictions, and anomalies in academic discourses on the topic. Secondly, one must move to analysing the social and political world, noting the obscured material effects caused through such scientific discourses.² The purpose of this is so one can connect the production of knowledge to social and political motivations. As Foucault explained:

Whereas the interpreter is obliged to go to the depth of things, like an excavator, the moment of [genealogy] is like an overview, from higher and higher up, which allows the depth to be laid out in front of him [sic] in a more and more profound visibility; depth is re-situated as an absolute superficial secret (Foucault cited in Hook, 2007, p. 151).

² The following terms are employed in this dissertation to refer to knowledge created, employed and distributed by those deemed to have some expert status in Western educational practices: academic knowledge, expert knowledge, formal knowledge, scientific knowledge (which includes social science knowledge).

To understand New Zealand's discursive formation on therapeutic sexual exploitation, therefore, this dissertation must research the topic 'like an overview, from higher and higher up' and make comment on the links between seemingly disconnected areas. It must examine academic knowledge on therapeutic sexual exploitation but it must locate that expert knowledge within a social and political world and alongside the implicit, lived knowledge of those affected by the knowledge created on therapeutic sexual exploitation. The following explains how this dissertation has been organised to achieve this goal.

The first chapter identifies six of Foucault's theoretical features that are connected to the creation, organisation and distribution of knowledge. Essentially, Foucault saw an intimate connection between knowledge and power, so much so he created the term knowledge-power (Hook, 2007). As it will be shown his ideas challenge foundationalism, but his theoretical approach does not tidily fit with social constructionism or post-modernism. However, the fundamental theoretical premise to this dissertation, which is taken from Foucault's work, is that knowledge is a social construction which is produced and maintained through a discursive formation (Foucault, 1969/1972). All the theoretical features discussed in chapter one support the notion that the scientific knowledge on therapeutic sexual exploitation has been a social construction intimately connected to power and silence.

Chapter two will explain four of Foucault's methodological principles that arise out of archaeology and genealogy. This chapter will describe how these methodologies, while distinct, are best employed together so as to understand the interconnections between scientific knowledge (academic, expert knowledge) and implicit knowledge, knowledge that is experienced and understood (Scheurich & McKenzie, 2005). It is the interconnectedness between the textual and the material in a given domain that is important because it draws attention to the fact that institutional, scientific knowledge is not neutral or a-political. This chapter explains how these four methodological principles, known as the principles of reversal, discontinuity, specificity and exteriority, will be applied in the upcoming chapters.

Chapter three begins by exploring Foucault's theoretical feature that modern day power focuses on controlling the soul. In doing so, the notion of discipline is explored. In particular, this chapter discusses how Foucault saw the creation of the individual psyche as being a social construction connected to modern day disciplinary procedures (Hook, 2007). This chapter employs some of the methodological principle of reversal and explores some of the social and political influences which led to the creation and establishment of the disciplines of counselling and psychotherapy in New Zealand. The second section of this

chapter applies Foucault's methodological principle of exteriority. It moves into contemporary times and locates the therapeutic disciplines of counselling and psychotherapy under the broader umbrella, alongside other mental health professionals. It shows how knowledge-power is embedded in political and social arrangements by looking at how those who are most profoundly affected by therapeutic sexual exploitation are treated by those professionals working within the mental health area.

The fourth chapter undertakes an effective history on overseas discourses on therapeutic sexual exploitation. Effective history is an aspect of the methodological principle of discontinuity. It is both necessary and useful to begin exploring the scientific discourse on therapeutic sexual exploitation with reference to the United States and Great Britain. Firstly, it is necessary to look at overseas historical scientific material on therapeutic sexual exploitation because, as it will be shown in chapter five, New Zealand has little academic data in this area. Secondly, it is useful to study the discursive trends in overseas material because it highlights that discursive formations change over time, but often what is not recorded in such scientific accounts, is why and how such changes came to take place. Foucault (1980/1991a) suggested that one reason for undertaking historical analysis is to explain the change elements within a discursive formation. Therefore, near the end of this chapter reference is made to one of those possible change elements, a political organisation dedicated to naming and addressing therapeutic exploitation. This process illustrates Foucault's theoretical feature that 'new' knowledge is created by a change in power relations.

The relevance of understanding an international discourse on therapeutic sexual exploitation becomes particularly apparent after reading chapters five and six. These two chapters focus solely on how New Zealand's discursive framework on therapeutic sexual exploitation has been organised and controlled and both chapters utilize the methodological principles of reversal and discontinuity. Chapter five explores the limited New Zealand based academic data and commentary on therapeutic sexual exploitation and notes that in this regard, at least compared to overseas, it seems to be a topic that is not widely researched or discussed in the public domain by New Zealand therapeutic practitioners.

Chapter six, on the other hand, undertakes a comparative analysis between four current New Zealand therapeutic Codes of Ethics. This is followed by a comparative analysis between the historical developments between two New Zealand based therapeutic Code of Ethics, covering the period between 1991 and 2009. All analyses focus on how therapeutic associations have defined ethical practice with regards to sexual relations occurring within therapeutic environments. New Zealand's discourse has been organised, it

seems, so that ethical standards on sexual relations within therapeutic environments can be discussed in the public domain. However, these studies contribute to discussions in chapter eight, which when read together, show the value of Foucault's theoretical feature that knowledge-power is best seen, initially, from a micro-perspective.

The issue of sexual relations occurring between client-group members within therapeutic group environments is investigated in chapter seven. This is one area of therapeutic sexual exploitation that appears to have been silenced in New Zealand, the United States and Great Britain. By employing the methodological principle of discontinuity, anomalies and contradictions within the scientific discourse on therapeutic sexual exploitation are identified. As a consequence, the question is asked as to why sexual relations between clients-group members have not been framed as a safety issue or as an ethical issue in therapeutic practice. In particular, it refers to the socially created terms of transference and counter-transference. In drawing upon another of Foucault's theoretical features it asks what might this form of knowledge-power be producing for those connected to, and affected by, therapeutic sexual exploitation?

Chapter eight, like chapter three, focuses the extra discursive, the obscured discourses, that lie immediately outside the expert teachings on therapeutic sexual exploitation. It explores, by adopting the methodological principle of specificity, how disciplinary bodies in New Zealand, and overseas, have been using their powers to respond to those affected by therapeutic sexual exploitation. It is organised into three sections: complaint processes, statutory legislation and common law. It studies how these three disciplinary procedures punish those who have breached their own ethical standards and have sexually exploited their clients of service. Equally, it asks what material effects are produced as a result of these disciplinary procedures for therapeutic practitioners, clients of service and their families. The disciplinary procedures are an influential feature of New Zealand's discursive formation on therapeutic sexual exploitation. By the conclusion of this chapter, it will be shown how knowledge-power is understood and conveyed through a *discursive formation*, which includes the extra-discursive, the discourses which extend beyond scientific discussions on therapeutic sexual exploration in one geographical location such as New Zealand.

The final chapter discusses the implications of the above explorations. It focuses on Foucault's theoretical feature that knowledge-power not only restricts, but it produces. It offers possibilities for what is being produced for clients of service and for therapeutic practitioners through New Zealand's discursive framework on therapeutic sexual exploitation. It emphasises that this dissertation is also a social construction. It has not been

produced through objective scientific endeavours, but through subjective push-pull dynamics inherent in power relations. Nonetheless, even though it is not objective science, it sits within the Western paradigm connected to science, via its association with the social sciences. It could be argued by some that the social sciences do not enjoy the same degree of respect in the knowledge hierarchy as the physical sciences, but nonetheless, in the Western world, the social ‘sciences’ still carry status and power that can silence the voices and the experiences of others who do not carry such prestige, status and power. This dissertation is no different. The final chapter concludes with another acknowledgement that this dissertation carries with it the ‘said’ and the ‘unsaid’. This dissertation is only a small piece in a much longer conversation on therapeutic sexual exploitation in New Zealand. Therapeutic sexual exploitation is not going to go away, nationally or internationally. Therefore, it is important to name it and locate it locally and internationally, and specifically, place it in the public domain. One survivor of therapeutic sexual exploitation saw it this way:

speaking out allows us to bring form to our pain, and breaks the isolation and silence that is otherwise the best friend of the powerful who abuse. In finding our voices, in ‘bearing witness’ in describing ‘things as they really are’ we take the power and make it our own. And, in speaking out, we help others to do the same (Wohlberg, n.d.).

Throughout the writing of this dissertation there has been reflection and discussion on the role and function of including personal statements within research projects. As I understand it, the purpose of including such personal statements has often been framed as a way of acknowledging the researcher’s personal stance, biases and subjectivities to the topic under investigation. The impetus for writing this dissertation has not been motivated purely by the love of academic or scientific inquiry. As stated above, it is a social construction which has been influenced by power relations, subjectivities and biases, my own included. Under Foucault’s framework, *all* knowledge creation is subject to these variables.

I have personal experience of some of the matters raised in this dissertation and of initiating complaints’ processes. I have chosen not to discuss my own experiences directly, or to include relevant quotes from personal communications and documentation from such complaints processes in this project. However, I am clear that such experiences have informed and influenced my questions and my thinking. As will be discussed in the body of the dissertation though, Foucault encourages one to question who is inviting whom to

disclose personal information and to what degree they are being invited to divulge such information. In such an exchange, who holds political power and who does not? In this situation, who is divulging personal details and who is not? In a generic sense, are supervisors, trainers, examiners, Heads of Schools, those on complaint committees, also expected to share their personal subjectivities to their students about the material being taught, marked or under review? In my opinion, transparency of personal biases should be noted and valued, but it carries more integrity when it is shared and practiced by all those in those in the system, including those who hold political power in a given arrangement. Otherwise, one runs the risk of the most politically vulnerable in a system being the ones who are expected to show their soul which in effect makes them psychological subjects for further examination by those with political power.

Furthermore, I have personal experience of being a client, a trainee, a supervisee and a therapeutic practitioner. I am none of those things now. Just as I do not see the value of personal disclosure in the same way that I once did, I do not see therapeutic practice in the same way that I once did. Perhaps that is because I am more attuned to power relations in such disclosure arrangements. Nor do not see myself in the same way I once did. I am not sure if discourses get deconstructed or if people get deconstructed; perhaps it is a simultaneous process. But if that is so, then so must be the process of re-construction.

Nonetheless, it has been with some humility, amongst a number of other emotions, which has led me grapple with the challenges put forward in this dissertation. Many of the critiques I will make of therapeutic practice, of therapeutic practitioners, of systems of denial, I have had to make of myself. I cannot divorce myself from my own history that has been preoccupied with therapeutic interventions. I cannot divorce myself from my own history that has encouraged others to be preoccupied with their therapeutic interventions. Nor can I divorce myself from my history of working within mental health, being connected to processes and procedures that have therapeutised people, drugged people up and locked them away. There are many things that I cannot divorce myself from, as much as I might like. Equally, I am sure that there are many aspects of my history that I ensure I remain divorced from. The process behind writing this dissertation, with the assistance of Foucault and others, has indeed been a learning experience.

Chapter One. Theory of Knowledge Creation

The Political Nature of the Social Construction of Knowledge

Introduction

Foucault's (1961/2008) first archaeological study is entitled *Madness and Civilization. A History of Insanity in the Age of Reason*. In the first instance this title might seem removed from exploring the conditions of possibility that have influenced New Zealand's discursive formation on therapeutic sexual exploitation. However, the theoretical underpinnings of Foucault's methodologies require the researcher to question whether scientific knowledge has produced a rational, civilized society. When exploring the discursive formation on therapeutic sexual exploitation one must examine how supposedly reasoned, scientific knowledge has been created, applied and distributed in this domain. Equally, one must examine the material effects of the application and distribution of such knowledge and ask whether it has produced a civilized society, or instead has it produced a veneer of a civilized society, which silences less than civilized practices.

The overarching theoretical principle for this dissertation is simple and it draws upon Foucault's ideas; knowledge is socially constructed, and as such it can be deconstructed and reconstructed. While such a statement appears uncomplicated, the process which lies underneath it is not. The history of Western reason which now permits knowledge to be framed as a social construction is, itself, embedded in power relations. It comes with its own struggles to claim validity and space over how knowledge can be understood. It is useful, and methodologically consistent, to place this dissertation's stance about knowledge creation within an historical context which gives insight into the Western world's alternative epistemological viewpoints. The value of this task is that it locates how different epistemological frameworks have influenced, and continue to influence, the scientific knowledge and scientific practice within the domain of therapeutic sexual exploitation.

Section one is the starting point for this historical analysis. The age of reason, modernity, is intimately connected to foundationalism. From a theoretical perspective, foundationalism argues that knowledge is gained through observable facts which are supported by empirical analysis. However, over the course of history, foundationalism, as an epistemological construct, has faced challenges from other epistemological positions, two of those being social constructionism and post-modernism. Both of these schools of thought have offered alternative views about knowledge creation to that offered by foundationalism. These latter two schools share a view that knowledge is based upon social

constructions not objective, scientific data. These two epistemological positions would argue that knowledge is created due to social formation of discourse and power. The point of difference between the two is how they interpret the forces which impact upon the social construction of knowledge (Powers, 2007). As this section will show, there are those working within the therapeutic disciplines that are debating the role and function of epistemology as it impacts upon professional practice (Besley, 2002; Cornforth, 2006; Drewery, 2005; Fish, 1999; Hansen, 2005; Hansen, 2006; Monk & Drewery, 1994; Rudes and Guterman, 2007). This first section, therefore, has four purposes: it provides a historical framework for how it became permissible for knowledge to be viewed as a social construction; it places Foucault's ideas within a socio-historical context; it also presents a reference point for analysing the epistemological influences upon current scientific knowledge creation within the field of therapeutic sexual exploitation. Finally, it highlights how some therapeutic professionals are debating the ways in which different epistemological frameworks have a direct bearing upon power relations for clients of service and their external worlds as well as power relations between themselves and their clients of service.

Section two focuses on theoretical features associated with the social construction of knowledge. It does this, though, by examining Foucault's unique epistemological position in knowledge creation, production and dissemination, which is connected to his term, knowledge-power. In drawing primarily from *The Archaeology of Knowledge* (Foucault, 1969/1972) and other commentators interested in Foucault's works, six salient theoretical features from Foucault's view about knowledge-power will be identified and their application to the research task explained. These features explain the relevance of the primary theoretical driver for this dissertation: New Zealand's discursive formation on therapeutic sexual exploitation is a social construction influenced by relations of power.

Section One: Foundationalism, Social Constructionism and Postmodernism

The function of theory

Foundationalism, anti-foundationalism, modernism, postmodernism, constructivism, social constructionism, critical theory, social theory, critical social theory, structuralism, post structuralism. These labels describe various bodies of thought associated with knowledge creation. This type of terminology is most likely to be employed by those working within scientific domains. Classifying and debating theoretical standpoints, may be seen by some as a luxury, an intellectual past time or pursuit, like playing chess; something to sharpen the mind but disconnected from the experiences of people who are

the subjects of such discussion. Leonardo (2004, p. 12) when writing his views on Critical Social Theory suggested that theorists working in this domain must link theory to the immediacy of lived realities, warning against the dangers of “theory production that detaches itself from the face of real, historical suffering...” In quoting others such as Said, Leonardo made the point that one should adopt a “...concrete theory that foregrounds historical experience and the necessity of interpreting its source and insight” (Leonardo, 2004, p. 12). As section two will illustrate, Foucault’s methods also require any research to be grounded in the immediate, everyday and ordinary life experiences of people (Hook, 2007).

It is my hope that the findings of this theoretical research project will ultimately have some connection to the lived experiences first and foremost for the clients of service of therapy and their whaanau who have experienced sexual exploitation within therapeutic environments. It is hoped it will have an impact upon Western discourse which seems to frame high degrees of emotional distress as some form as medico-mental illness. It is hoped it will challenge how Western society, in the age of reason, has labelled ‘the mentally disordered’ and rationalised their ‘treatment’. This is pertinent to this research given that clients of service, due to therapeutic sexual exploitation, might find themselves in heightened states of emotional distress and as a result find themselves being labelled and treated for their supposed mental dis-order. This research, while exploring New Zealand’s discursive formation on therapeutic sexual exploitation is, then, also raising questions, about ‘insanity in the age of reason’.

Foundationalism

Epistemologies which refer to the impact of the social world upon knowledge creation do so by reference and opposition to foundationalism. Foundationalism, sometimes called positivism, modernism, essentialism or empiricism, describes some of the underlying assumptions of the empirical analytic tradition of scientific inquiry. Under this tradition, there are at least four core assumptions associated with foundationalism: the existence of un- or pre-interpreted facts in an objectively real world that are available to people through sense perception; what our senses perceive is the absolute truth. Under foundationalism, knowledge is created through indisputable fact, and as such fact and value do not merge. Consequently, empirical analytic science deals only with fact and as such it can discern the philosophical essence of concepts and casual relationships (Powers, 2007). Knowledge, under foundationalism, has no connection to power or silence, or to the

political and personal interests of those engaged in its production or distribution. Knowledge is neutral and politically unbiased.

Foundationalism is most strongly seen in the physical sciences. This may seem removed from counselling and psychotherapy since these two disciplines are located within the human sciences. However, as chapter two will illustrate, counselling and psychotherapy, their historical beginnings and their current practices, are connected to the physical sciences, particularly psychiatry. Furthermore, foundationalism's presence still exists, independently but perhaps more obscurely, in the social sciences. There are those within counselling and psychotherapy who acknowledge that their disciplines have been influenced by modernist thinking and practices (Fish, 1999; Kaye, 1995; Monk & Drewery, 1994; Parker, 1999; Rudes & Guterman, 2007; Strong, 2002). There are also other therapeutic practitioners who have questioned, sometimes more indirectly, the epistemological position of their disciplines, reflecting upon how therapeutic knowledge is produced, by whom and for what purposes (Barton, 1999; Besley, 2005; Bunce, 1992; Cornforth, 2006; Hansen, 2006; Manthei, 1991, 2001, 2004; Riikonen & Vitaja, 1999). The following quote from Kaye (1995, p. 30) is indicative, he argued, of the critical analysis that the majority of therapeutic practitioners are engaging with:

Since its inception, psychotherapeutic research has been underpinned by conceptualizations of both therapy and research predominately modernist in nature. Not only is there a recursive relationship between the two discourses such that each informs the other, but the foundationalism mode of inquiry privileged in Western discourse as scientific imposes a particular construction of psychotherapy for research purposes..³

When exploring knowledge-power about therapeutic sexual exploitation one needs to be alert to the conditions upon which current scientific knowledge came into being. Has knowledge about therapeutic sexual exploitation been based on what is perceived to be true, indisputable facts, supposedly devoid of subjectivity or political bias by those who have scientific power and status? This question needs to be asked not only to those operating within the physical sciences but also to those enjoying the privileges of being seen as experts in the human sciences. Experts in the social sciences also enjoy special

³ Rudes and Guterman (2007, p. 390) take a different view, however, thinking that "the majority of those in counselling profession seem resistant to joining the social constructionist zeitgeist."

status and speaking power.⁴ Foucault's archaeological method ensures the links between current practice and foundationalism are made transparent, as the upcoming discussion in chapter two on the term counter-transference will illustrate.

While it might be argued that foundationalism has, and still is, a powerful and prevalent influence in Western thought and practice, it has, and does, face challenges. Powers (2007) suggested, as do others (Leonardo, 2004; Hansen, 2006), that foundationalism was first challenged early in the 20th century when it started to apply assumptions from the physical sciences to the social sciences. The remainder of this section shows how the 'truth' of foundationalism has been challenged, as alternative viewpoints have gained scientific place as being equally valid means for understanding knowledge. Such confrontations have been labelled in different ways: critical social theory (Powers, 2007; Leonardo, 2004) or structuralism (Rudes & Guterman, 2007) or social constructionism (Hansen, 2006). Such terminology can cause some confusion so for the purposes of this assignment this initial phase of challenge will be referred to as social constructionism, although it is acknowledged that this term is not used by all commentators.

Social Constructionism

Social constructionism was one of the first fields of thought to challenge foundational thinking and its powerful assertion that science is objective. The origin of social constructionism to a large degree, has its roots in the Frankfurt School of Sociology with its study on Kantian theory of knowledge coupled with a Freudo-Marxist theory of modern society around 1923 (Leonardo, 2004). These earlier theorists critiqued foundationalism as it was being applied to the human sciences and according to Powers (2007, p. 19) they argued that:

...groups of people exist in relation to the historically based dominant ideologies that structure their experience ...' furthermore, there were ... various ideologies that functioned unconsciously as a tool of domination, preventing individuals from perceiving that they are victims of exploitation in increasing areas of their lives (Powers, 2007, p. 19).

This quote refers to the process of subjectification whereby people become subjects of a dominant discourse by simultaneously engaging in mastery and submission of the

⁴ Some may wish to argue that power imbalances are still prevalent in the educational domain with social science knowledge being seen, and treated, as less valid than physical science knowledge, nonetheless, this does not diminish the power still held by social scientists.

proscribed discourse about who they are supposed to be and what they are supposed to be doing – without necessarily understanding the power relations behind such a discourse (Davies, 2006; Drewery, 2005). This viewpoint challenged the foundationalist notion that human beings were deemed to be in control and rational at every point. Instead of suggesting that human beings are the creators of discourse, as foundationalism would argue, social constructionism interpreted human beings as being created by discourse. A significant goal under social constructionism is, therefore, to present people with other possible representations, discourses, and ways of seeing and understanding themselves and their world. It is believed that new insights will ultimately assist them in their emancipation from the ideological domination of others (Powers, 2007).

Monk and Drewery (1994), New Zealand commentators, provided a useful overview of social constructionism, noting that an implication of this epistemological position is to challenge foundationalism. Social constructionism is “concerned with identifying the processes by which people come to account for themselves and the world in which they live.... Meaning is not given, in some essential way. People produce it” (Monk & Drewery, 1994, p. 7). If this is accepted, it has an implication for those in, and affected by, therapeutic practice. People produce meaning, create meaning about therapeutic sexual exploitation; meaning is not given in some essential way.

An interesting exchange on the value of social constructionism within therapeutic practice occurs between Hansen (2005) and Rudes and Guterman (2007). Hansen (2005) suggested that with the rise and influence of social constructionism, counselling had devalued the inner subjective experience of clients, which, to Hansen, was the very aspect of practice that separated counselling from other psychological-based professionals. He suggested that if, philosophically, knowledge and self-understanding are created by group processes then, by default, what should now be of primary professional concern is co-created meaning, not the inner experience of the client. Hansen (2005) disputed that changes in epistemological orientation (from focussing on the inner experiences of the client to understanding the socially constructed meanings of clients) were progressive. In reply, Rudes and Guterman (2007) argued that one positive aspect of social constructionism in counselling has been its reconceptualization of pathological human systems (systems here refer to individuals, couples and families). They suggest that traditional language systems in this domain have assumed and objectively defined social systems (that is, clients of service) as the problem in need of help; in other words through a social constructionist lens, it would be more accurate to suggest that “the problem creates the system, rather than the system creates the problem” (Rudes & Guterman, 2007, p. 391).

Applying this debate to the research question, one might ask how have the inner experiences of clients who have been sexually exploited within a therapeutic environment been framed and responded to by therapeutic experts. Has the inner experience of clients of service been lost and in its place, a co-created meaning between therapeutic practitioner and client of service been the primary aim? This raises another question. If co-created meaning of therapeutic sexual exploitation is employed, do the co-authors' voices have the same personal, political and institutional weighting?

Alternatively, applying Rudes and Guterman's (2007) argument, has the client created the problem when sexual exploitation occurs within therapeutic practice, hence their need for more therapeutic intervention; or has sexual exploitation within therapeutic practice been defined as the problem in need of attention? These questions will be addressed within this dissertation but for now they highlight how epistemological positioning might influence the framing and the response to the issue of therapeutic sexual exploitation.

Connected to social constructionism is the correspondence theory of language (Hansen, 2006). Under a foundationalist epistemology, the order and structure of language, of discourse, is assumed to reflect the world it describes. However, under social constructionism, language or discourse is not seen as a neutral representation of truth, but rather as something that reflects the interests of the dominant group who controls the ideological framework (Hansen, 2006). As section two will show, Foucault's approach to research also values a close reading of language, of discourse, but only in so far as it relates to the extra-discursive, to the material effects of that language or discourse. Foucault has also argued that language, or discourse, is intimately connected to power interests – what is said, and what is not (Foucault, 1969/1972). However, Foucault maintained that power relations are much more complicated than just a top-down power dynamic. Foucault, in my interpretation, valued the personal experiences of others hence his works highlighting the value in bring subjugating discourses and hidden practices to light. However, the major point of difference between the above commentators and my understanding of Foucault's orientation is that Foucault cautioned against professions claiming to 'work with the soul of the individual', but rather he suggested that such professional institutions are now the modern agents of control.

Before examining Foucault's rationale for such a claim, it is useful to explore the influences of post-modernism on understanding the relationships between power-knowledge. Just as foundationalism initially faced challenge, social constructionism also has experienced challenge. Postmodernism, the new discursive turn, challenged social

constructionism for being too rigidly fixed upon pre-determined notions of what constituted truth, power and oppression. Having an appreciation of social constructionism and post-modernism allows one to understand the similarities and differences inherent in Foucault's unique approach to understanding socially constructed knowledge.

Postmodernism

Postmodernists have argued that the claims made by social constructionists about the relationship between domination, oppression and subjectification had now come to be viewed as a transcendental truth (Powers, 2007). Postmodernists have not discredited the notion that formal knowledge, discourse and identity are socially constructed. Nor have they discredited the notion that groups of people experience oppression and marginalisation by other groups of people. What postmodernists appear to have challenged is the complexity of such power relations. They emphasize that people have multiple relationships, multiple social, cultural and professional roles and as a result identifying issues of power and oppression is complex. Issues of power relations will be context specific and cannot be applied universally to some groups of people in all circumstances. Postmodernism would argue that nothing can be assumed to be 'the truth' or 'reality', given that groups of people will experience and understand concepts and situations differently, depending upon their own social worlds which have created them. By way of an example, albeit simplified, Hansen (2007), when discussing the postmodernist view of correspondence theory of language, suggested that the canine could be seen as a beloved family pet, a food source or a representation of the divine. It is the mindset of the observer, what has been created by his or her own social world that dictates 'the meaning' of the canine. There cannot, under this theory, be a universal truth about the canine.

Ellsworth (1989) provided a more in depth appraisal of totalising narratives. Exploring critical pedagogy that sought to emancipate others, claiming the expert could facilitate their emancipation, she argued was a futile and dangerous activity. She reflected upon her own role as a feminist lecturer offering a class that would be a 'safe place' where those interested in researching and responding to racism on campus, could come together. However, as the class continued she realised she could not guarantee a safe place because power relations was a fluid and multi-faceted concept – that existed everywhere, including in her classroom. She and the students experienced domination in the outside world and in this class. However, they experienced it differently depending upon the various social worlds they came from and the various social relationships they engaged in. There was no one truth about oppression and domination; individuals and sub-groups experienced it

differently, engaged with it differently, and resisted it differently. Furthermore, she claimed that key assumptions associated with critical pedagogy such as “empowerment and student voice and dialogue are repressive myths that perpetuate relations of domination” are based on rationalist assumptions” (Ellsworth, 1989, p. 298).

Ellsworth (1989) suggested that all discourses and narratives are partial. Indeed one of the crucial features of discourse is ‘the intimate tie between knowledge and interest, the latter being understood as a standpoint from which to grasp ‘reality’” (Aronowitz, as cited in Ellsworth, p. 304). In the final conclusion to this article she suggested that in trying to work against oppressive social formations each person needed, in talking with another, to appreciate that their understanding of the other was partial, interested and potentially oppressive. No-one could assert their experience and perception of the world ‘as truth’ – including those who held firm views about which groups in society oppress other groups.

Monk and Drewery (1994) pick up this point and discuss the confusion around the terms social constructionism and constructivism. The latter term, they suggest, has had common usage in New Zealand. Under constructivism, people may know the world through their own constructions. Under this model, different models, different constructions can claim equal validity. There is no one truth or reality; but different yet equally valid forms of truth. Constructivists therefore, tend to value the superiority of individual experiential worlds over socially constructed ones. Social constructionists, on the other hand, value more highly the idea that “knowledge systematically produces certain kinds of subjects and locates people within power relations” (Monk & Drewery, 1994, p. 9). The danger, according to the authors, if adopting more of a constructivist view, is that one could overlook the assumptions which make theories appear meaningful or neutral, even when they are reproducing power relations which perpetuate their own privileged position.

As the following chapters explore the historical discursive formation around sexual exploitation in therapeutic environments, it will be noted that some therapeutic practitioners have not always framed sexual relations in therapeutic environments as exploitative, but rather as a positive therapeutic act, an opportunity for further learning, or as misguided transference. Some clients of service, on the other hand, have regarded sexual relations with their therapeutic practitioner as sexual exploitation. Partners and children of both the therapeutic practitioner and client of service may see sexual relations within a therapeutic environment in a different light again. One could argue that all views and all experiences are valid, however, in making such an argument one must remember that therapeutic practitioners are considered social scientists, experts on human relationships

but clients, partners and children are not. To employ a familiar metaphor: would it be accurate to assume that even if all parties affected by therapeutic sexual exploitation were heard, would all voices have equal weighting in the production of knowledge? This is the point that social constructionists wish not to be lost in the 'equal but different' post-modernist or constructivist approach.

Nevertheless, postmodernist thought does offer the view that one cannot assume it is only some groups of people who are oppressing other groups of people. By way of example, it could be said the discourse produced by the political institutions of therapeutic practice produce an oppressive discourse, not just for clients of service, but also for partners and children in the situation of therapeutic sexual exploitation. As Ellsworth (1989, p. 299) asked: "what diversity do we silence in the name of 'liberatory' pedagogy?" This question can equally be applied to those working in 'liberatory' counselling and psychotherapy: "what diversity do we silence in the discourse around sexual relations in the therapeutic environment." Postmodernism, invites us to challenge pre-conceived fixed notions of what constitutes violence and exploitation and who may be affected by it. Could it be possible to consider, as chapter seven does, that it is unsafe, unethical and exploitative for client-group members to have sexual relations with each other whilst in therapeutic environments? Similarly, could it be possible to consider whether sexual relations within any therapeutic environment is a form of violence against partners and children?

As the following section will illustrate, Foucault's theoretical orientation to knowledge creation, the debate between social constructionism and postmodernism is less important. Foucault's unique theoretical approach is not contradictory to either social constructionism or postmodernism but rather it incorporates aspects of both within its own distinctive epistemological position. What social constructionism and post-modernism share with Foucault's view, is a rejection of foundationalism, and a rejection that scientific knowledge is devoid of political interest.

Section Two: Foucault's version of the social construction of knowledge

Unlike the above discussions, Foucault is not a school of thought, although given the extent of commentary on his work, one could well argue otherwise. Foucault has been described as a prolific writer, researcher, historian, activist as well as philosopher (Gutting, 2005). More has now been written about him and his theories, than he has written himself. It is not uncommon to find the term 'Foucaultian/Foucauldian' to represent a school of thought which has extended from Foucault's ideas (Besley, 2002; Hook, 2007; Powers, 2007). Michel Foucault was a French philosopher who lived between 1926 and 1984. He

contributed much to the study of, and debate around, the social construction of knowledge and its link to power and silence. This research project draws heavily upon his ideas (Foucault, 1961/2008; Foucault 1969/1972; Foucault, 1966/1970; Foucault, 1980/1991a; Foucault, 1980/1991b; Foucault, 1983) and from the ideas of those who have an interest in his work (Besley, 2002; Besely, 2005; Cornforth, 2006; Fish, 1999; Gutting, 2005; Hook, 2007; Parker, 1999; Peters, 2001; Prado, 1995; Scheurich & McKenzie, 2005).

Peters (2001, p. 170) commented that “to characterize [Foucault’s] work and his ideas is very difficult, because not only did he change the direction and emphasis of his thoughts over his lifetime but also he did not fit into any of the normal academic categories.” Foucault also avoided aligning himself with a particular philosophy. He did not classify himself as a post-modernist, post-structuralist or social constructionist. In explaining his own epistemological position he said: “Do not ask who I am and do not ask me to remain the same ... Let us leave it to our bureaucrats and our police to see that papers are in order” (Foucault, 1969/1972, p. 17). This comment illustrates a number of angles inherent in Foucault’s view of knowledge-power: its connection to subjectification, its link to technologies of power, as well as its tie to its precursor, resistance.

Even though Foucault’s methodologies focus on knowledge and its relationship with power relations, Foucault did not see people as powerless. As Hook (2007, p. 86) noted, “resistance is a necessary precondition for the operation of relations of power, without such forms of contestation and struggle there would be only complete domination, subservience and obedience.” This quote is stating that power relations, by their very nature, cannot exist without resistance. This research, while taking a broader and historical perspective, explores New Zealand’s discursive formation on sexual exploitation within therapeutic environments. It is not a light topic for by its very nature it is likely to be connected to feelings of pain and shame. Yet, within it, as will be shown in subsequent chapters, there is a history of people’s resistance, and a history of determination not to have one’s experiences marginalised.

The presence and value of resistance is a fundamental principle underlying Foucault’s theory about knowledge creation and power relations. The following analysis of Foucault’s theory on knowledge-power, therefore, sits upon the theoretical belief that power-knowledge, power relations exist only because of resistance. However, Foucault did not succinctly describe his research in terms of a theory and method, but rather, his research pieces seem to combine theory and method all in to one. As a result, this provided others (Hook, 2007 and Scheurich & McKenzie, 2005) with the opportunity to interpret his work for more contemporary Western research purposes. Their insights into Foucault’s

works will also be utilized in identifying six theoretical features of Foucault's research methodologies as they will be applied to the current task: researching New Zealand's discursive formation on therapeutic sexual exploitation.

'New' knowledge is created through social tension, a change in power relations.

Gutting (2005) explained how Foucault disagreed with the foundationalist principle that new knowledge is a result of a logical development or advancement in thought processes. 'New' knowledge meant that there had been a change in power relations between those who created knowledge about Others and the Others who no longer agreed. Changes in thought are not due to thought itself, but they are due to changes in the social forces that control the behaviour of individuals. This is how the term knowledge-power came to be. New knowledge, for those adopting Foucault's theoretical advancement, is not the result of progressive advancement but rather it is socially created as a result of social tension, social interaction and a movement in power relations.

Foucault saw it as imperative to identify and analyse foundation assumptions because without doing so, any new knowledge would be constructed on a base of untested suppositions. Therefore, for new knowledge to occur there requires a challenge to established power relations, a challenge to pre-existing but unexamined assumptions that sit at the bottom of a meta-theory or discipline (Hook, 2007). The application of this principle in researching New Zealand's discursive formation can be seen in a number of ways. Chapter three explores a number of unexamined assumptions that relate to the establishment and practice of therapeutic disciplines and their connections to other disciplines within the psy-matrix. Chapter four explores how the scientific term, counter-transference, came into being and how it is being utilized today within the discursive formation of therapeutic sexual exploitation. Such explorations ask to what extent has the disciplines of counselling and psychotherapy been created under foundationalist principles. Furthermore, how, if at all, have any modernist practices influenced the current discursive formation on therapeutic sexual exploitation?

Knowledge-power is understood and conveyed through a discursive formation.

To understand the processes whereby new knowledge emerges, one must refer to historical and current discourses. In *The Order of Things* Foucault (1970) discussed the link between discourse and knowledge-power. He argued that through language, through discourse, a history of knowledge becomes possible. That may seem like a tautology, but what Foucault was referring to is the importance of language, for it is through language that

one can learn more about the history of knowledge-power. It is the history, not of language per se, but the history of discourse, which provides access into the untested assumptions of present day power-knowledge:

What civilizations and peoples leave us as the monuments of their thought is not so much their texts as their vocabularies; their syntaxes, the sounds of their languages rather than the words they spoke; not so much their discourse as the element that made it possible; the discursivity of their language (Foucault, 1966/1970, p. 87).

A history of language, the history of discourse, enables the study of reason; how we have come to reason things the way we do. It reveals the conditions in which people have come to understand concepts and practices. It also reveals, according to Foucault, that formal knowledge is not built upon the continuous, through a rational, logical trajectory, but rather formal knowledge emerges as a result of complex social factors. Studying discourse is not a neutral language exercise; it is an examination about the implicit rules which govern the range of thought in a given area (Hook, 2007). This dissertation is a study into the conditions of how current knowledge around therapeutic sexual exploitation came to be formed. It is an examination of the implicit rules which now govern the range of thought in the area of therapeutic sexual exploitation.

Drewery (2005, p. 313) defines discourse as “sets of systematic assumptions about the way the world should be.” This is interpreted to mean when one looks at New Zealand scientific knowledge around therapeutic sexual exploitation, one might find a set of assumptions. When one looks outside the New Zealand scientific knowledge around therapeutic sexual exploitation, for example, like overseas discourse on the same topic, one might find other sets of assumptions about therapeutic sexual exploitation. When read together, this will provide insights into the systematic assumptions operating within the discursive formation on therapeutic sexual exploitation.

Chapter six undertakes a close textual analysis on four New Zealand Codes of Ethics to examine what, if any, assumptions exist between these professional bodies to provide a New Zealand discourse around therapeutic sexual exploitation. When looking at overseas discourses about therapeutic sexual exploitation one can see patterns about what might be constituting a national or possibly an international discourse on therapeutic sexual exploitation. However, as the following therapeutic feature will explain, other forms of discourse, for example those emanating from a legal context, also contribute to the discursive formation around therapeutic sexual exploitation.

Power-knowledge has social functions which are embedded in political and social arrangements.

Following on from the immediate point above, to undertake discourse analysis on any topic in a top-down approach in isolation from the wider social and political world would miss the full significance, the full impact of the material effects of power-knowledge (Scheurich & McKenzie, 2005). To understand the material affects of New Zealand's power-knowledge in the area of therapeutic sexual exploitation one needs to consider how this discourse features within wider political and social arrangements.

Chapter two will explore how the institutions of counselling and psychotherapy fit within the broader social and political arrangements of what might be commonly termed mental health services. What social functions might the psy-professions be fulfilling that are not, in the first instance, immediately transparent when looking at the scientific discourse on therapeutic sexual exploitation? Similarly, chapter seven explores the role of ACC legislation which has often been stated to provide "no-fault" compensation and rehabilitation scheme to those affected by personal injury, including those who have been victims of sex crimes. In what ways has knowledge-power around therapeutic sexual exploitation been embedded in this particular political arrangement? What social function is it serving? Equally as relevant is the political role that scientific research has upon knowledge-power in the area therapeutic sexual exploitation. What social function has research played in influencing the discursive formation around therapeutic sexual exploitation? The value of exploring these extra-discursive influences means one is better able to locate the scientific discourse on therapeutic sexual exploitation within a broader socio-political context, within its broader discursive formation.

Knowledge-power is best seen, initially, from a micro-political perspective.

Foucault suggested being wary of totalizing narratives which sought, before the fact, to see power as operating in a uni-directional way. Instead, he suggested that if one wished to understand the complexity of power relations start with the everyday, specific and localised situations and investigate how power is played out between subjects and particular institutions. Hook (2007, p. 64) elaborated:

In opposition to sociological, structural or economic analyses, Foucault advances the need to engage elementary specifics of how power is exercised at the precise and localized individual levels of particular institutional interfaces; he prioritizes as such the specifics of how power is interacted between subjects and institutions.

The application of this theoretical feature when researching the power relations operating within the discursive formation of therapeutic sexual exploitation requires one to examine how power is exercised at the precise and localized level of particular institutional practice: between clients of service and therapeutic related institutions. The material effects of relations of power, between subjects and therapeutic institutions will be explored in depth in chapter eight which examines how courts and complaints processes have responded to therapeutic sexual exploitation. The advantage of starting at the local and specific level of relations means that the research "... questions the already-said at the level of its existence: of the enunciative function that operates within it, of the discursive formation and the general ... system to which it belongs" (Foucault, 1969/1972, p. 151). This allows one to see any contradictions and anomalies that might be operating within the discursive formation on therapeutic sexual exploitation. It invites one to explore further what might be the material effects of such inconsistencies for subjects, in this instance, clients of service, who have been sexually exploited within a therapeutic environment.

Modern day knowledge-power focuses on controlling the soul.

When exploring the material effects of the discursive formation on therapeutic exploitation, those who adopt a theoretical view akin to Foucault's must stay alert to how discursive patterns of knowledge-power focus on controlling the psyche of subjects. Such a statement may seem dramatic, however, as Hook (2007, p. 8) stated,

If we are to grasp the psychological from the perspective of a Foucauldian analytics, we need to make recourse to a mode of history able to outline the emergence of psychological individuality as a nodal point and epistemic concerns of modernity.

In *Discipline and Punish* Foucault sought to research how the concept of the individual, the individual psyche, came to be created, by whom, and under what circumstances. What Foucault reported, according to Hook (2007), is that with the advent of humanism in Europe in the early 19th century, the new way to punish criminals for rebelling social norms and regulations was not to punish their bodies, as has been the norm under sovereign rule, but instead to develop a 'science' and 'a treatment' around their psychological disposition. It was people's souls, their individual psychological make-up, their personhood, which now came under scrutiny. It was their very being that was to be studied, analysed, treated and corrected. This opened a new door for science which ensured that cyclical nature of knowledge-power. "Objectifying knowledge came to persuasively sanction prescriptions of expert intervention, which in turn, intensified the procedures of

individualisation able to capture the problematic facets of deviant subjects” (Hook 2007, p. 15). This is the productive circularity of knowledge-to-power and power-to-knowledge. Examples of this circular dynamic within the domain of therapeutic sexual exploitation will be provided in later chapters.

Working with the ‘psyche of others’, treating the individual, has its history intimately connected with correction, discipline and punishment. Furthermore, this new field of science has brought with it a plethora of experts to assist with this task: social workers, counsellors, psychotherapists, psychiatrists, criminologists, psychologists, educationalists, just to name a few, many of who are no doubt hoping to enable, improve or empower individuals to change. This hope, according to Foucault, is misplaced. Instead Foucault (1964/2008) would argue this is the new form of discipline; the individual has been produced as a way of ensuring social control.

The relevance of this theoretical feature to researching therapeutic sexual exploitation is to be attentive to how a discursive formation uses power-knowledge to locate people as individuals. It requires one to be mindful as to how Western knowledge-power is being used to strengthen a discourse which requires and encourages subjects to address ‘who you are’ in isolation from the voices of others and from the political issues which around them. Chapters and eight discuss how counselling and psychotherapy, within their own prevailing discourses, were created to alleviate troubling social tensions. Yet when locating personal problems such as therapeutic sexual exploitation within the private therapeutic sphere, have political issues, societal issues of power and control, been minimised and obscured?

Knowledge-power not only prohibits or restricts but it also produces.

Connected to the above feature is the belief that knowledge-power not only prohibits or restricts, but it also produces. Foucault saw value in extending this analysis of power relations. He suggested including the question: what has a particular dynamic of knowledge-power produced? Who is benefiting, and in what ways, as a result of accepting that knowledge-power needs to focus on his or her so termed psychological self? The following quote from Foucault elaborates on this point:

What makes power hold good, what makes it accepted, is simply the fact that it doesn’t only weigh on us as a force that says no, but that it traverses and produces things, it induces pleasure, forms knowledge, produces discourse. It needs to be considered as a productive network ... more than a negative instance whose function is repression (as cited in Hook, 2007, p. 119).

At various points throughout this dissertation it will be asked what is being produced as a result of the interplay between knowledge-power within the area of therapeutic sexual exploitation. The focus of chapter nine, the implications chapter, will be on what knowledge-power has not only restricted but also produced as a result New Zealand's current discursive formation around therapeutic sexual exploitation. However, to understand what knowledge-power has produced, one needs to appreciate how technologies of power are being employed to discipline, and to this end, the genealogical method is useful. Drefus and Rabinow as quoted in Hook (2007, p. 21) explain:

Disciplinary technologies advance ... by taking what were essentially political problems, (problems of control), removing them from the dominant discourse, recasting them in neutral language of science and transforming them into technical problems for the sole attention of specialists and experts. The constructive role power has played in the constitution of such problem domains is thus elided in the humanist attention to the refinement of various specialist technical domains of treatment.

Therefore, the task of this dissertation is to use Foucault's archaeological and genealogical research methods to see if therapeutic sexual exploitation is a) a political problem, a problem of control, that b) has been removed from the dominant discourse and re-cast in neutral language of science, for c) the sole attention of specialists and experts, thus d) now being seen in need of humanist attention being re-organised into specialist fields for treatment. It is when these questions are explored one is more able to access what knowledge-power has been materially producing within the discursive formation of therapeutic sexual exploitation.

Conclusion

These six features are the theoretical drivers for this research project and they are connected to Foucault's work and in particular, his notion of knowledge-power. Knowledge about therapeutic sexual exploitation is not intimately connected to objective, rational science but rather it is connected to power relations. Foucault's theoretical approach to knowledge-creation challenges foundationalism, yet it is distinct from both social constructionism and postmodernism. The following chapter explains how Foucault's theoretical features are entwined in his research methods. The upcoming chapter will explain the process whereby power relations inherent in knowledge-power within New Zealand's discursive formation on therapeutic sexual exploitation can be researched, deconstructed and re-constructed.

Chapter Two: Methodologies of Critique

Archaeology and Genealogy Combined

Introduction

Foucault said:

It seems to me that the real political task in a society such as ours is to criticise the workings of institutions which appear both neutral and independent; to criticise them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them (cited in Hook, 2007, p. vi).

Foucault's research methodologies, archaeology and genealogy, are employed in this dissertation to critically examine the workings of counselling and psychotherapy as institutions that may appear both neutral and independent. They are utilized to explore whether knowledge-power, via the scientific discourse on therapeutic sexual exploitation, has been used to obscure the nature and extent of violence caused through institutional practices connected to therapeutic sexual exploitation.

Hook (2007) thought the underlying aims of Foucault's research methodologies were to: a) bring to light practices that had gone masked or buried in the telling of a history's discipline and to b) give voice to the subjugated knowledges that had been silenced in the political process of creating knowledge. By employing Foucault's research methodologies in this dissertation, it could be argued, that silence is being researched. However, how does one define, locate, yet alone study, silence? Is silence not a reflection of emptiness, a blank space, nothingness? Those who align themselves with Foucault would be likely to argue that silence is not necessarily any of these things; rather it could be quite the opposite. Silence is the gap or the portal to the voices waiting to speak. It can represent the silenced, and a complex system that has maintained and supported a silencing of practice.

This chapter will explain how Foucault's research methods will be used to examine a complex system of power relations in the field of therapeutic sexual exploitation. Foucault's methodological principles provide a systemic way of researching silence. However, even with the help of others (Hook, 2007; Peters, 2001; Scheurich & McKenzie, 2005) understanding Foucault's research methods is not necessarily an easy task. Nevertheless, as Fish (1999, p. 55) noted,

[t]he opportunities for psychotherapists in studying Foucault's writings, presented particularly by the examples of archaeologies and genealogies, are to

explore psychotherapy as an institution; to further our understanding of the political, historical forces that have shaped, and continue to shape, in Foucault's terms, its discourse and practices.

I would add there is equal value, if not more value, in current and potential clients of service studying Foucault's research methodologies. It may be of value to them to understand the institutional nature of counselling and psychotherapy. Equally, it may be useful for them to appreciate the political and historical forces which have shaped therapeutic discourse and practice given that it is non-therapeutic practitioners who do not readily have a voice in the creation of therapeutic knowledge. They are the ones who have been the subjects, not the owners, of such discourses and practices.

This chapter will introduce Foucault's research methodologies in four sections. The first section will provide an introduction to Foucault's research methodologies and how their relationship to each other might be understood for the purposes of this research project. The following two sections will explain, in turn, each methodological approach, noting their relevance and application to the remainder of the dissertation. The fourth section will elaborate upon four of Foucault's methodological principles to be utilized in this dissertation. By the completion of this chapter it will be shown how the combination of Foucault's theoretical features and the methodological principles will be used to explore some of the conditions of possibility which have influenced New Zealand's discursive formation on therapeutic sexual exploitation.

Section One: An introduction to Foucault's research methodologies

It is generally accepted that over the period of Foucault's writing there are three distinct phases or methodological shifts in his thinking and practice (Prado, 1995; Scheurich & McKenzie, 2005). These are commonly referred to as archaeology, genealogy and care of the self. However, there appears to be no consensus from commentators as to the relationship between Foucault's three methodologies (Hook, 2007; Prado, 1995; Scheurich & MacKenzie, 1995). Does each subsequent methodology supersede the later? Or is it even correct to assume that there are in fact three separate methodologies from which to choose, perhaps all contribute to a whole? This dissertation certainly does not claim to capture – or even totally understand – the complexity of Foucault's methods and their separate or interdependent relationship to each other. Nonetheless, I have taken the stance, which is more akin to Scheurich and McKenzie's (2005) position, that no one methodology is superior to another but rather that they are interconnected. Nevertheless,

due to space restrictions, this dissertation has employed the two most well known methodologies, archaeology and genealogy. Even with this restriction, it became clear during this research process that the fullness of these two methodological approaches could not be totally encapsulated within this dissertation. It was with some relief that I read Scheurich & MacKenzie's (1995) comments that it would take a book length piece to adequately capture even one of his methodological approaches. The following discussion and application of Foucault's methodologies is, therefore, a partial account of his research methods. Through these methods the impact caused by the social and political construction of knowledge in the area of therapeutic sexual exploitation will be explored.

Hook's analysis (2007) provides an accessible route to Foucault's work. He referred to Foucault's works as either 'Foucault's version of critical discourse analysis' or 'Foucault's genealogies'. Yet, Hook's interpretation of Foucault's methodological imperatives included aspects of both archaeology and genealogy. In a practical sense, this does not seem inappropriate, per se. It does, however, create an anomaly by referring to them as genealogies alone. Foucault, himself, saw a connection, not a merging, between these two methods:

If we were to characterize it in two terms, then 'archaeology' would be the appropriate methodology of this analysis of local discursivities, and 'genealogy' would be the tactics whereby, on the basis of the descriptions of these local discursivities, the subjected knowledges which were thus released would be brought into play (Foucault, cited in Scheurich & McKenzie, 2005, p. 849).

On another occasion Foucault is quite clear that there are two distinct methodological approaches and one informs the other: "Genealogy defines the target and aim of the work. Archaeology indicates the field in order to do the genealogy" (Foucault, 1983, p. 2). Given Foucault's comments, the dissertation proceeds on the premise that there are two distinct methodologies which can work together to produce one coherent methodological structure.

The primary purpose of this dissertation is to study the discursive formation on therapeutic sexual exploitation in the New Zealand context. That is the material which is being examined. The archaeological method provides a structure for such a task. However, such an examination has a secondary purpose. The secondary purpose is represented by the analysis of power relations that will be revealed by examining the historical and current scientific discourse on therapeutic sexual relations. That is the relevance of Foucault's genealogical studies to this task. In particular, Foucault encouraged one to be alert to

institutions that had a strong humanistic epistemology; they needed to be examined to ensure that behind humanistic rationales, institutions were not being used as agents for authority and control. Foucault's opinion was that "humanism is the discourse of the rationalization of power in late modernity" (Hook, 2007, p. 70). As the following chapters will illustrate, it is unlikely that one is able to explore the scientific discourse on therapeutic sexual exploitation without making an analysis about corresponding power relations, including the possible roles that the institutions of counselling and psychotherapy might have in this regard.

Section Two: Archaeology -The Discursive Field of Study

The archaeological method was the first phase of Foucault's work. *Madness and Civilization* (1961/2008), *The Birth of the Clinic* (1963) and *The Order of Things* (1966) are Foucault's research pieces which explore the history of reason in particular domains: the treatment of the insane, the system of medical practice and the modern social sciences (Scheurich & McKenzie, 2005). *Archaeology of Knowledge* (Foucault, 1969/1972) is not an historical piece of research but it is where Foucault offered reflections and refinements on the archaeological method. This dissertation draws upon the *Archaeology of Knowledge* (1969/1972) more heavily than the three previous texts.

One definition of archaeology is provided by Foucault:

... Archaeology [is] not exactly a discipline but a domain of research, which would be the following: in a society, different bodies of learning, philosophical ideas, everyday opinions, but also institutions, commercial practices and police activities, mores – all refer to a certain implicit knowledge [savoir] special to this society. This knowledge is profoundly different from the [formal] bodies of learning [des connaissances] that one can find in scientific books, philosophical theories, and religious justifications, but it [savoir] is what makes possible at a given moment the appearance of a theory, an opinion, a practice (Foucault, as cited in Scheurich and McKenzie, p. 846).

Foucault is suggesting that formal knowledges (des connaissances) cannot be studied and understood just on their own terms; in fact, formal knowledge is quite different from implicit knowledge (savoir), knowledge that is understood, but unspoken, in wider society.⁵

⁵ As mentioned in the introduction, des connaissances (formal knowledges) is being referred to in this dissertation as scientific, expert or academic knowledge; savoir (implicit knowledges) is referred to as implicit or unspoken knowledges.

It is this formal knowledge, academic and scientific knowledge, however, that legitimates a theory, an opinion or practice. This is why, when referring back to the theoretical features in chapter one, it is important to understand how knowledge-power influences discourse and how that is enacted in social and political arrangements. Scientific or academic knowledge, including those knowledges that emanate from counselling and psychotherapy, do not sit in a vacuum devoid of power and devoid of power relations within the wider world. Furthermore, the knowledge produced within the scientific realm, formal knowledge, does not necessarily match with the knowledge as understood implicitly through practices in society.

In researching the conditions of possibility that have influenced New Zealand's discursive formation on therapeutic sexual exploitation, the archaeological researcher must closely inspect New Zealand's scientific knowledge or discourse in the domain of sexual relations occurring within therapeutic environments from an historical perspective. This is the focus of chapters five and six. Secondly, one must examine expert knowledge about therapeutic sexual exploitation as it has been created overseas. Chapter four examines some of the international discourses on sexual relations occurring within therapeutic environments which have possibly had a bearing on New Zealand's discursive formation. Chapter seven explores the created expert discourse on sexual relations within therapeutic group settings. These four chapters have a strong archaeological focus, the value of which is best understood, however, alongside the findings of the genealogical chapters.

Gutting (2005, p. 33) saw Foucault's archaeological method as uncovering the set of constraints which make it "unthinkable to query knowledge assumptions." The process of archaeology, as interpreted by Gutting (2005) is to uncover these implicit rules, the unspoken and taken for granted rules, that operate within a given domain. He thought what is consciously expressed from the mind of experts and others, is less important than the underlying structures that form the context of their thinking (Gutting, 2005). Chapter seven explores the ethical dilemma, that to date seems not to have been discussed in the public arena, of sexual relations occurring between client-group members within therapeutic environments. More importantly, what this method is exploring is why it has been unthinkable to frame client-client sexual relations as an issue of safe, ethical practice for therapeutic group environments. This could arguably be one gap, one portal; a silence waiting to speak.

Foucault's methodological principles, which will be explained in the fourth section of this chapter, are useful in this process. They provide the methodological means for

examining the more complex, unspoken and taken for granted rules which have made such questions, like the ethics of client-group member sexual relations, unthinkable to debate. They locate such a question within the wider, historic discursive formation on sexual relations occurring within therapeutic environments. It is necessary to discuss client-group member sexual relations with reference to the social and political factors which have influenced the scientific discourse on other types of sexual relations occurring within therapeutic environments. The archaeological method is interested in examining who has been deemed to have speaking rights and who has not; who has been the subject of study and who has not. It asks what have been the rules which make some matters 'sayable' and other matters 'unsayable' within the therapeutic discursive frame (Foucault, 1969/1972).

Section Three: Genealogy - Technologies of Power

The genealogical method, often referred as to the study of technologies of power, is defined as the second phase of Foucault's work and is connected to the archaeological method. His genealogical works are *Discipline and Punish* and *The History of Sexuality* (Scheurich & McKenzie, 2005). As mentioned above, although Foucault's genealogies followed his archaeologies he did not see genealogy as an improvement which was supposed to supplant archaeology. When asked if he had ever stopped doing archaeology, Foucault replied, "No. And I never stopped doing genealogy", possibly indicating the interconnected nature between the two methods (Foucault, 1983, p. 2).

Gutting (2005) recounts Foucault's explanation of the emergence of genealogy and its relationship to archaeology. Archaeology is a description of thought, the conditions of possibility that created thought. It is the examination of a discursive field, such as therapeutic sexual exploitation. However, archaeology did not, and does not, explain why changes occur within a discursive domain; archaeology describes the changes, it does not *explain* the causes for such changes. As will be observed in chapter four, it is not clear by reading scientific texts on sexual relations occurring within therapeutic environments *how* it came to be that the discourse in this area has changed over time. At one time sexual relations within therapeutic environments were more likely to be called issues of mishandled counter-transference and now such incidents are commonly framed as cases of professional sexual exploitation. The genealogical method attempts to uncover the causal explanation for changes in discursive formations.

At this point, the relevance of joining archaeology and genealogy becomes apparent. 'How questions' arise from the findings of the archaeology research; they are the questions

that are explored through the genealogical method. With regard to this dissertation, the application of the genealogical method can best be understood by referring to Foucault's descriptions of his own work. Referring to both archaeology and genealogy, he states:

... the target of analysis wasn't 'institutions', 'theories' or 'ideology', but *practices* – with the aim of grasping the conditions which make these [practices] acceptable at a given moment... It is a question of analyzing a 'regime of practices' – practices being understood here as places where what is said and what is done, rules imposed and reasons given, the planned and the taken for granted meet and intersect. (Foucault, 1980/1991b, p. 75).

In this dissertation what are being studied are not institutions, theories or ideologies, around therapeutic sexual exploitation, per se, but conditions at various times which made practices around therapeutic sexual relations acceptable. The 'how questions' are important. Foucault (1980/1991b, p.74) revealed that the question he asked when undertaking research, such as *Civilization and Madness* was "not *what*, in a given period is regarded as sanity or insanity, as mental illness or normal behaviour, [but] ... *how* these divisions are operated." Those questions can be asked here. The question here is not what, in a given period, has been regarded as therapeutic sexual exploitation, but *how* did changes in the discursive formation around sexual relations within therapeutic environments occur? *How* have the divisions in therapeutic treatment been organised for those connected to therapeutic sexual exploitation? These are the questions that arise from undertaking an archaeological study on New Zealand's discursive formation around therapeutic sexual exploitation that the genealogical researcher seeks to answer. In particular, chapters three and eight adopt a strong genealogical approach.

The final point to emphasise is that archaeology and genealogy are historical methods of research. Given the space restrictions of this dissertation, selected topics have been researched, in varying degrees, from an historical perspective: the origins of counselling and psychotherapy in New Zealand, historical developments in the scientific discourses on sexual relations in therapeutic environments and the historical developments in New Zealand based therapeutic Codes of Ethics. The value of history will be elaborated in the subsequent section. For now, the following is worth noting. Foucault referred to *Discipline and Punish* to explain a point about the relevance of history in the research process:

... I was aiming to write a history not of prison as an institution, but the practice of imprisonment: to show its origin, or, more exactly, to show how this way of doing things ... was capable of being accepted at a certain moment as a

principal component of the penal system, thus coming to seem an altogether natural, self-evident and indispensable part of it (Foucault, 1980/1991b, p. 74)

The historical approach adopted in researching the discursive formation on therapeutic sexual exploitation is also asking about the practice of therapatisation. It stays alert to the question as to *how* therapeutic practice has become a component of the mental health system, thus coming to seem an altogether natural, self-evident and indispensable part of it. More specifically for the purposes of this dissertation, *how*, if at all, are therapeutic practices in New Zealand being used as a principle component of mental health treatment in cases of therapeutic sexual exploitation?

The above discussion has provided a partial overview of Foucault's two research methods that are utilized in this project. While each process has a distinct function, when joined together, they are for the purposes of this dissertation, considered one methodological approach. Their purpose is to describe the conditions of possibly which have influenced New Zealand's discursive formation and to analyse the authority of power relations working within this domain. How this might be activated is described in the following section where four of Foucault's methodological principles will be explained. It is through these principles that methodological techniques can be utilized to explore the links between knowledge-power and silence, and its impact, in the domain of therapeutic sexual exploitation.

Section Four: Foucault's methodological principles

The following four methodological principles underpin the singular methodological approach used in this dissertation. While these are Foucault's methodological principles, I have found Hook (2007) and Scheurich and McKenzie (2005) most useful in interpreting these methodological principles for contemporary research requirements.

The Principle of Reversal

The first of Foucault's methodological principles is the principle of reversal (Hook, 2007). What lies behind this principle is the requirement to show how knowledge has been created due to a variety of forces and events. Knowledge has not appeared as a miraculous scientific creation. Reversal in this context is intended to refute and revert assumptions of origin. In doing so, the technique endeavours to reveal instances when current knowledge-power is based upon foundational assumptions of an unbiased scientific inquiry. The principle of reversal might find that "that there are no such origins and that origins are

often ..”..randomness, piecemeal fabrications, dissensions, disparity, passion, hatred, competition, ‘details and accidents’ ... errors, [and] false appraisals ...” (Foucault, cited in Scheurich & McKenzie, 2005, p. 851).

Chapter three applies the principle of reversal to explore the origins of the disciplines of counselling and psychotherapy in New Zealand. Similarly, in chapter four the principle of reversal is applied to explore the origin of ethical standards around sexual relations occurring within therapeutic environments, and specifically the origin of the term counter-transference. Integral in such examinations are the issues of power-knowledge; who is talking and who is not; who is deemed to have status to talk and who does not? Whose version of history predominates in the creation of such disciplines and concepts? Is current knowledge-power in these areas based on foundationalist assumptions on ‘scientific’ evidence? In other words, “the principle of reversal ... may be seen as a way of politicising the de-political, self-warranting accounts of discourse...” (Hook, 2007, p. 119)

Principle of Discontinuity

The second of Foucault’s methodological principles is the principle of discontinuity, which is referred to by both Scheurich & McKenzie (2005) and Hook (2007). What underpins this methodological injunction is the distrust in cause-effect patterns of explanation of knowledge creation. It calls into question that knowledge is supposedly built upon a progression of thought. Foucault would suggest that such progression of knowledge is more likely to be based upon a unity of ideas which is employed to mask a series of hidden events.

To explore whether current scientific knowledge is based upon foundational assumptions one needs to undertake, what Foucault has termed ‘effective history’.⁶ Effective histories are ‘histories of the present’ as compared to more traditional accounts of history, which Foucault has called ‘histories of the past’. A history of the past is essentially a work of the present, as it is anchored in the same socio-cultural norms that first created it. “A history of the present, by contrast, prefers to interrogate the present, to examine its values, discourses and understanding *with recourse* to the past as a resource of destabilizing critical knowledge (Hook, 2007, p. 121). Chapters five and six undertake an effective history of New Zealand’s therapeutic Codes of Ethics and explore how past norms may be influencing present standards of safe and ethical therapeutic practice.

⁶ Foucault relied upon Nietzsche’s work in this regard (Hook, 2007).

Foucault argued that “history becomes ‘effective’ to the degree that it introduces discontinuities into our very being... It will uproot its traditional foundations and relentlessly disrupt its pretended continuity” (as cited in Scheurich & McKenzie, 2005, p. 852). It endeavours to disturb what was previously considered fixed, immobile and unified and instead draws attention to anomalies, contradictions and discontinuities within a given discursive formation. There are a number of examples in this dissertation where traditional foundations about sexual relations within therapeutic environments have revealed discontinuities. Chapter seven, as an illustration, endeavours to examine some of the possible foundational assumptions as to why sexual relations between client-group members has not been considered a therapeutic safety issue, or an issue of sexual exploitation. I will argue that this may be, in part, due to dominating and past taken-for-granted discourses on responsibility, power and vulnerability within therapeutic environments.

Principle of Specificity

The third methodological feature, the principle of specificity, requires the researcher to consider whether a discourse and practice in one domain is a regular or common response to a certain set of events. Instead of interpreting an institution’s response to therapeutic sexual exploitation, as an original response in its own right, one is asked to investigate whether that institution’s response is, in fact, part of a regular response from other disciplinary technologies (Hook, 2007). An inquiry of this nature is seen in chapter eight, when individual technologies of powers in New Zealand, complaint processes, courts and commissions, are compared to see how they are using their powers to respond to the issue of therapeutic sexual exploitation. It raises questions as to how power might be reproducing itself in this sphere and elsewhere within society.

Describing the scientific discourses on therapeutic sexual exploitation has a purpose over and above providing an historical textual analysis. While such descriptions are necessary, they are ultimately undertaken so they can be analysed in terms of their material effects; given that material effects are less likely to appear within scientific texts on a topic. Hook (2007, p. 127) suggested that “there can be little doubt that Foucault’s priority is not that of ‘reading’ textuality, or the signification of text, but rather that of materiality, conditions of possibility and historical circumstances.” This dissertation, therefore, attempts to move between scientific discourses on therapeutic sexual exploitation and the

extra-discursive, the materiality, the conditions of possibility and the historical circumstances that have impacted upon power-knowledge in this domain.

Principle of Exteriority

The final methodological principle to be discussed is the principle of exteriority. As with the principle of specificity, the principle of exteriority focuses upon the extra-discursive. Hook (2007) and Scheurich and McKenzie (2005) suggest that Foucault's methodologies require a double epistemology to be incorporated into the research process. To remain studying within the singular discipline or epistemology, they have argued, would increase the risk of colluding with ongoing, but somewhat hidden mechanisms, or blind spots of power-knowledge. Hook (2007, p. 128) explained:

Analysing text alone should not be seen as an adequate means of 'getting to grips' with power; power would seem to be a far more sophisticated thing than textual discourse alone ... One needs to reference one's analytical conclusions, wherever possible, to a double epistemology; to corroborate findings in the extra-textual dimensions.

This dissertation relies upon a double epistemology; the disciplines of law and therapeutic practice. Chapters three and eight focus on treatment options and legal avenues for redress for those affected by therapeutic sexual exploitation. Both chapters refer to New Zealand laws which show the material effects of power operating in the domain of therapeutic sexual exploitation.

The principle of exteriority can also be applied to illustrate the circularity of knowledge-power to power-knowledge and the material effects of that operating within the extra-discursive. One specific example of the interconnected nature of power-knowledge working at the extra-discursive level, and across disciplines, is seen in chapter eight when discussing the common law test to establish what is considered 'reasonable practice' in professional negligence cases. What this example attempts to show is "material arrangements of power enable certain speaking rights and privileges, just as they lend material substantiation to what is spoken in discourse" (Hook, 2007, p. 129). In other words, knowledge-power is shown, through conscious and unconscious means, to multiply its own authority.

Conclusion

Archaeology and genealogy, as research methodologies, have their own specific role in the process of analysing the social and political influences in knowledge creation, organization and distribution. While acknowledging their independent status it is argued that there is a connection between the two. When these two methodologies are joined together to research New Zealand's discursive formation on therapeutic sexual exploitation, they provide a powerful and now united methodological approach. The four procedural principles enable this integrated method to inspect the political nature and the material effects of knowledge-power within the domain of therapeutic sexual exploitation. In doing so, the six theoretical features discussed in chapter one will be incorporated into the discussion and analysis. The following chapter, which explores the origins and functions of discipline within the context of therapeutic sexual exploitation, will begin by utilizing the principle of reversal. In doing so, it elaborates upon Foucault's theoretical feature that modern day knowledge-power focuses on controlling the soul.

Chapter Three: The Origins and Functions of Discipline

Counselling and Psychotherapy in New Zealand

Introduction

To locate scientific discourse on therapeutic sexual exploitation with its material effects, one must have an appreciation of the social and political worlds in which the disciplines of counselling and psychotherapy have emerged and in which they are currently operating. This chapter centres on the extra-discursive, the discourses which explore the origins, relationships and functions of New Zealand's therapeutic professions within the broader field of mental health practice. This is important because socially constructed scientific concepts are produced from within socially constructed disciplines. It is from these socially constructed disciplines that therapeutic concepts have been created and applied in the area of therapeutic sexual exploitation.

This chapter explores the less visible discourses which have had an influence on the discursive formation on therapeutic sexual exploitation. This will be achieved in two stages. The first section explores the origin of therapeutic disciplines in New Zealand. It discusses how Foucault understood the concept of discipline in relation to psy-professions. In doing so it will explain further the theoretical feature that modern day knowledge-power is focussed on controlling the soul. After exploring the social and political origins of counselling and psychotherapy it will be suggested that counselling and psychotherapy can also be defined as a united therapeutic discipline within the broader field of mental health practices. The second section of this chapter requires one to consider Foucault's above mentioned theoretical feature to New Zealand's discursive formation on therapeutic sexual exploitation. It explores how therapeutic practitioners, as part of a wider group of mental health practitioners, are currently providing services to those who are experiencing high levels of emotional distress. This is relevant to the research topic because some clients of service who have experienced therapeutic sexual exploitation may subsequently find themselves seeking, or being given, further mental health assistance. It also serves as a comparative analysis for chapter eight, which explores how New Zealand therapeutic practitioners, and others, have been disciplining therapeutic practitioners who have sexually exploited clients of service.

Section One: The Origins of the Discipline

Locating discipline within discourse: the disciplines created to discipline

Hook (2007, p. 119) provides an argument for this chapter: “Thinking discourse as event ... enables us to look beneath the alibis of creation, and to isolate very different (and multiple) origins of discourse, which Foucault (1981a) suspects will reveal functions of exclusion.” This is what underpins the methodological principle of reversal. Expert knowledge has not been ‘created’ miraculously or meticulously through scientific endeavour; its creation has been influenced due to a number of social and political events. In that political process there will be processes of exclusion. In examining origins of discourse around counselling and psychotherapy one is better able to see how some knowledge came to be created and how other knowledge came to be excluded.

As the title of this chapter infers, when employing Foucault’s methodologies the term discipline is a key feature of description and analysis. *Colin’s Concise Dictionary* (2003, p. 257) describes discipline as both a noun and a verb:

Discipline. “Noun: 1. The practice of imposing strict rules of behaviour on other people. 2. The ability to behave and work in a controlled manner. 3. A particular area of academic study. Verb: 4. To improve, or attempt to improve, the behaviour of (oneself or someone else) by training or rules. 5. To punish.

These multiple definitions of discipline are applied within Foucault’s research methodologies. The multiple meanings of discipline are used in this dissertation to ask: How are disciplines being used to discipline, to improve through training, rules, or punishment? In analysing New Zealand’s discursive domain on therapeutic sexual exploitation one must stay mindful to the discourses which have created the origins and functions of discipline. How have the origins and practices of the disciplines of counselling and psychotherapy been used to improve self or others through training, rules, or punishment?

This may, at first instance, seem implausible. Some people may be willing to concede that the professions of counselling and psychotherapy are interested in improving self or others. Some people may be more willing to concede that perhaps aspects of therapeutic practice may be involved with training. It might be more difficult to consider that counselling and psychotherapy can be, and has been, employed to improve through rules or through punishment. Nevertheless, with Foucault’s two methodologies now united in this dissertation, one must consider such a question.

As explained in the first chapter, one of Foucault's theoretical features is that the modern form of knowledge-power has a disciplinary function of controlling the soul. According to Hook (2007), Foucault argued that since the time of humanist reforms in the late 18th century traditional disciplinary measures employed by the sovereign came under attack. It became unacceptable for the sovereign to use his or her prerogative power to apply inhumane excesses at the scaffold against those who had breached the sovereign's rules. Around this time the rationale and the practices of discipline changed. Instead, punishment, it was said, had to be moderate and humane, calculated and measured. It was -

no longer an issue of revenge and the singular prerogative of the sovereign; the responsibility to punish consequently came to lie with the most appropriate representatives of the social body ... the standard of justice was now that of 'humanity'; a joint humanity that all parties of the social contract were understood to share (Hook, 2007, p. 12).

Foucault argued that this was a beginning of the socially constructed concept of the individual psyche. Forms of punishment had to be individualised for offenders, to fit the individual's intent: their will, their tendencies, their habits. Correspondingly, this led to an increase in studying and objectifying 'the criminal' for the purposes of eradicating crime. There was more emphasis placed upon understanding the so called problematic and criminal people: delinquents, perverts, homosexuals, and hysterics. Such groups became objects to study in great detail. The emergence of the psychological, therefore, has been intimately connected to exercising power over those who were deemed, (by some forces) to be in need of improving, training or punishing (Hook, 2007). As Foucault has stated:

[T]he individual is the result of ... procedures which pin political power on the body. It is because the body has been subjectified, that is to say, that the subject function has been fixed on it, because it has been psychologised and normalized, it is because of all this that something like the individual appeared, about which one can speak, hold discourses, and attempt to found science (cited in Hook, 2007, p. 8).

It is this account which informs Foucault's theoretical feature that modern day knowledge-power focuses on the controlling the individual soul. With this historical backdrop provided, the following sections explore the origin of New Zealand's two therapeutic disciplines and the possible contention that they have had a disciplinary function in New Zealand society.

The origins of counselling as a discipline in New Zealand

Foucault's methodological principle of reversal is employed in this section. Its purpose is to refute and unsettle what otherwise might be framed within scientific texts as the origin of counselling in New Zealand. Given that the following sections are a description of the socially constructed discourse on the emergence of counselling and psychotherapy in New Zealand it is timely to return to the aims of archaeology. Foucault (1980/1991a) reminded the researcher that when studying discourse, one is studying the rules which at a given period and for a given society define the limits and forms of what is 'sayable' and 'unsayable', what is remembered and what is forgotten and what has been transformed over time. Another question the researcher must be conscious of is "how [has] struggle for control of discourses [been] conducted between classes, nations, linguistic, cultural or ethnic collectivises?" (Foucault, 1980/1991a, p. 60). Being mindful of these questions is important when considering the following description of the academic discourse of counselling's emergence in New Zealand.

The counselling discipline within New Zealand is said to have begun between the mid 1960s and 1970s (Cornforth, 2006; Ludbrook, 2003; Miller, 1996; Penny, Epston & Agee, 2008). Cornforth (2006) suggested the discipline of counselling first became recognised in the 1960s through the Department of Education which had reported high rates of juvenile delinquency in the previous decade. As a result, the government sought to place guidance counsellors in secondary schools. Webster and Hermansson stated that: "The will to develop guidance and counselling did not spring simply from caring about people. Social problems manifested in both school and community and emerged in ways which aroused widespread concern for social stability" (as cited in Cornforth, 2006, p. 11).

Ludbrook (2003), on the other hand, listed the occurrences where counsellors received statutory recognition in New Zealand, suggesting that this may be a possible beginning for counselling as a profession. The Education Amendment (No 2) Act 1964 placed a duty on principals to provide guidance and counselling for students – although the definition of what might constitute such guidance and counselling was unclear. It did not mention counselling as an expert discipline in its own right. The earliest law that recognized counselling as being a distinct discipline is the Domestic Proceedings Act 1968 which gave courts the power to refer spouses to 'a conciliator' in an attempt to resolve their 'unhappy differences'. The Children's and Young Persons Act 1974 and the Domestic Protection Act 1982 are also earlier acts that gave New Zealand courts the power to refer distressed family members to counselling (Ludbrook, 2003).

At this point it could be suggested that counselling emerged in New Zealand as a discipline to improve young people and families who appeared to be in some form of emotional distress and who were exhibiting socially disordered ways of behaving. People who were visibly not fitting into the social rules of being in a settled family arrangement were more likely to come under psychological care or scrutiny. Attention was not directed towards changing the system; the system was directed towards changing the distressed individual or the distressed family. This is the criticism that Rudes and Guterman (2007) made about the traditional approaches of counselling which social constructionism had attempted to rectify. Counselling discourse had located and responded to people's distress as if the distressed people were the problem. This is a significant point that will be explored when looking at clients of service who subsequently are distressed due to therapeutic sexual exploitation. How has the scientific counselling discourse located and responded to those who are distressed in this situation?

A third account by Miller (1996) highlighted the establishment of the New Zealand Counselling and Guidance Association in 1974 as possibly a significant point in the creation of counselling as a discipline. In 1975 the Association's newsletter defined this new Association's role as: "finding criteria for membership, developing a Code of Ethics and finding a rationale for the work and legitimising the counsellor role" (Miller, 1996, p. 39). Miller also noted that the organisation was concerned with membership growth. This suggests that one condition of possibility for the creation of the counselling discipline in New Zealand was personal self-interest, through a desire to build numbers and create a self-defined rationale for their existence. Foucault (1969/1972) referred to self-interest as being one condition of possibility for the creation of discourse. He argued that it would not be unlikely for those with political power to create a discourse which might be skewed to suit their own purposes or to be driven by emotional and less than objective means.

Penny, Epston and Agee (2008) provided a personal account, and a tribute, to the life of Esther Hall and it is from this account that interesting information about the origins of counselling in New Zealand can be gleamed. This is Hall's story of her experience as being part of the first generation of counsellors in New Zealand. Her introduction to counselling came in 1962 through a guest speaker at an evening Fireside Group, comprising young mothers from the local church. It was at this meeting that she heard of plans to establish a counselling agency called Marriage Guidance. The impetus for this move arising from the 1954 Mazengarb Report regarding youth offending. In the Mazengarb Report a connection was made between youth offenders and 'broken homes'. As a result the recommendation

followed that there was a need to strengthen nuclear families. Marriage Guidance was one response to that need – and volunteer counsellors were required for recruitment.

It could be argued that the perceived need for counselling in New Zealand was driven by the government and supported by churches on the created discourse that there was a need to strengthen nuclear families to solve increasing social instability. The problem had been identified. It was delinquent youths who come from broken homes. The problem was not defined as: poverty, sexual abuse by clergy and family members, the impact of government directives to send men to wars, intimate relationship violence, murder, rape and/or land alienation through New Zealand's colonial history. The created scientific discourse seems to suggest that the discipline of counselling emerged as a humane response to social problems. However, what is less transparent is that counsellors, under the directives of the government and the church, had defined who the social problems were.

There are two other points of interest in Hall's article: the inherent value laden process of selection within counselling and counselling's connection to psychiatry and psychology. Firstly, the obscured nature of the subjective selection process for counsellors is reflected in Hall's words. Trainees for Marriage Guidance were selected:

on who we were, not on our qualifications, or whether or not we had led conventional lives. What they were looking for were people who had come to terms with their own lives and who were open to the lives and experiences of others (Penny, Epston & Agee, 2008, p. 3).

These are subjective means for establishing a scientific discipline and it raises questions: If people were deemed not to be suitable for the profession was that due to 'who they were'? On what basis did the selection panel assess who had come to terms with their own lives? What sort of behaviour was to be judged as showing acceptance of one's life? Was acceptance considered a finite process? Could it be that those who were doing the selection might not have fully 'come to terms' with their lives thus increasing the risk of them making political and prejudicial decisions about the suitability of candidates? Could it be that selectors chose, even unconsciously, people who would not disturb their own world views about themselves?

This is relevant for the issue of therapeutic sexual exploitation. As will be discussed later there is overseas data which suggests there is a high rate of therapeutic sexual exploitation within training environments (Pope & Vasquez, 1998; Webb, 1997). What if selectors or trainers of therapeutic practice came with a history of therapeutic sexual exploitation as a client of service, as a therapeutic practitioner or even as a family member?

Could this affect their judgment as to who they accept or reject as a possible trainee? At what point would it be considered, and by whom, that a therapeutic trainer had come to terms with his or her experience of sexually exploitative behaviour? Or could the trainer's interpretations of his or her behaviour, given their connection to knowledge-power, normalize sexual relations within therapeutic environments as a therapeutic learning experience for all parties concerned? Would this effectively create a cultural norm within this environment that sexual relations between parties were in some ways acceptable, or even desirable? These questions will be addressed in subsequent chapters.

Hall's account of the interviewing process for potential counsellors is also significant (Penny, Epston & Agee, 2008). While there were a number of phrases in the selection process, if successful, the trainee volunteer would have met with: a local committee; a doctor who inquired about a person's life experiences; a psychiatrist who looked into family of origin, and a psychologist. They would have undergone various psychological tests including IQ testing and the Rorschach ink blots tests and been observed in a group process. In undertaking an effective history of the origins of counselling one can see that counselling did not emerge, disconnected from other psy-practices or other psy-professions. It did not emerge as a challenge to psychiatric practices of the day; as a more humane approach to deal with emotional suffering due to abuses of power. It could be argued that its very existence emerged out of psy-practices. The discipline of counselling was employed, in fact, to maintain the social order of the day.

The final point to be taken from Hall's comments was her reference to the Carl Rogers and others, who subsequently offered an alternative model to counselling. Rogers, Hall claimed, placed higher value the personal qualities of the counsellor than traditional psychotherapy practice had previously done (Penny, Epston & Agee, 2008). Rogers argued that the counsellor's ability to show 'unconditional positive regard' (through personal qualities such as warmth, empathy, and genuineness) is the core condition required for therapeutic change (Drewery, 2005). One might contend that this moved counselling away from psy-influences. However, one cannot escape the fact that the discipline of counselling emerged under a set of social and political conditions which were inherently bound with power relations. Those who held institutional power had described what sort of people were the causes of social instability and how they needed to be treated. Furthermore, those with power within the psy-professions had placed themselves as selectors for 'suitable' trainees, thus placing selectors and trainees at the centre of the solution for such social problems. Now established, counselling has become a seeming

independent discipline that has the authority to speak about what treatment works best for those experiencing emotional distress and disorder.

It has been approximately 50 years since the first wave of counsellors were selected in New Zealand. Since then there has been an enormous increase in those operating within this self determined, government-church-psychiatric driven discipline. Others have provided discussion as to why there has been such an increase in numbers (Cornforth 2006, Hermansson, 1999; Miller, 1996; Penny, Epston & Agee, 2008). In 2010, on the Careers Services government website, 150 tertiary based diplomas, degrees or post graduate degrees are listed which offer counselling like papers and qualifications (Careers Service, n.d.). It is not difficult to find counselling experts specialising in nearly every facet of human existence: eating, sex, marriage, adolescence, conception, abortion, sterilisation, alcohol and drug use, sport, trauma, pregnancy, adoption, gambling, dying, grieving, working, separating, loss, anger, sexual abuse, physical abuse, employment and vocation, and communication. The profession of counselling is now well established as a social science discipline in New Zealand.

Another of Foucault's theoretical features is that knowledge-power produces, as much as it restricts. At this point, one possibility is that knowledge-power in counselling has produced something more than an increase in professional numbers and modalities. It has produced, through multiplication, its political force and application as an expert, scientific discipline. Conversely, what might this form of knowledge-power be restricting? It might be restricting political activities by focussing and attending to the individual soul or psyche. As Fish (1999, p. 66) stated:

Like the law, psychotherapy [and counselling] is an atomizing institution. We treat individuals, whether as isolated units or in couples ... within discursive frameworks ... that do not speak of collectivises, dominations of one group over another, ideology, or the possibility of governmentally authored and sanctioned oppression.

Currently, I am unaware of any collective political voice of ex-clients of counselling or psychotherapy. The closest approximation that I am conscious of is the collective voice of those connected to the anti-psychiatry movement. It is unclear if the 'juvenile delinquents' and those 'broken home people' had institutional, political voice as to how they understood the causes of their distress. When Hall (Penny, Epston & Agee, 2008) referred to be chosen for counselling, not based on qualifications but on 'who we were' – it is unclear to what extent that included Maori, juvenile delinquents, broken home people,

poor people, people with limited formal education and people who were visibly showing their emotional distress. Primary research might uncover the composition of the ‘who we were’ in more detail.

If Hook’s (2007, p. 119) assertion is accepted that “thinking discourse as event ... enables us to look beneath the alibis of creation, and to isolate very different (and multiple) origins of discourse, which ... will reveal functions of exclusion” one now has questions to ask. Where are the voices of those broken home people and the so termed juvenile delinquents? New Zealand is a country populated by immigrants who’s nuclear and extended families were broken in the process of colonisation. The then governmental sanctioned, but illegal, Maori land confiscations of the 1860s nearly decimated many Maori families (Walker, 1990). This academic discourse has not seemed to connect emotional distress and social instability to the effects of colonisation for either the colonisers or those being colonised. This is exclusion in the social construction of knowledge-power. This is archaeology; describing what has been selected and excluded in scientific discourse. As the upcoming chapters will ask, whose voices have been included or excluded in New Zealand’s counselling discourse on therapeutic sexual exploitation?

The origins of the discipline of psychotherapy in New Zealand

New Zealand psychotherapy as a created discipline, by comparison to counselling, is in some regards more difficult to trace in a dissertation. This is because the practice of psychotherapy has been historically and currently conducted by professionals also working within more established disciplines such as psychiatry and psychology. To undertake a thorough exploration of the practice of psychotherapy as it is perceived within these two other disciplines would a worthwhile research task. However, it sits outside the current scope of this project. Nonetheless, it does need to be noted that modern understandings of psychotherapy initially appeared through the disciplines of psychiatry and psychology. The practice of psychotherapy in New Zealand has its early historical links with state funded psychiatric hospitals (Joyce, 2002).

Cook (1996), however, in the *Australian and New Zealand Journal of Psychiatry* provided an account of the early history of the New Zealand Association of Psychotherapists. A beginning for ‘stand-alone’ psychotherapy in New Zealand could be said to have begun in 1947 with the formation of the New Zealand Association of Psychotherapists in Christchurch. Cook (1996) suggests that Dr C M Bevan-Brown was instrumental in this regard. After returning from London in the early 1940s Dr Bevan-

Brown attempted to inform the medical profession and the general public about the principles of psychotherapy. Significantly, the teachings focussed on the fact that “neurosis and personality disorders were *largely unpreventable* and that with good nurture of babies and young children many of these disorders would never develop” (emphasis added, Cook, 1996, p. 2). Attention went to the value of breast-feeding and skin-to-skin contact for babies. It seemed that psychotherapy, at least through Bevan-Brown, was suggesting that inadequate parenting was one of the primary reasons for why people developed personality disorders.

Yet, within this discourse there is also the scientific statement that not all mental disorders can be attributed to the lack of adequate parenting and presumably, then, not all disorders could be cured by psychotherapy. What were not made explicit is what sort of disorders might be classified as unpreventable and how such unpreventable disorders might be treated. This may suggest, therefore, that psychotherapy did not emerge as a challenge to the foundational assumptions of psychiatry. It emerged perhaps more as an additional psychiatric-therapeutic tool to draw upon when working with those who exhibited emotional distress. This point needs to be noted for later discussion. How might those who are experiencing extreme emotional distress in 2010, caused or triggered by therapeutic sexual exploitation, being diagnosed and treated by therapeutic practitioners? Do they have a preventable or unpreventable mental disorder that is capable of being treated by psychotherapy?

It was recorded that Bevan-Brown sought ‘suitable’ lay people whom he could train – but only after there was a lack of interest from medical doctors. As with counselling, however, the article was silent to what sort of lay-people, exactly, were considered suitable for training. By 1947 the New Zealand Association of Psychotherapists was formed. A year later a week’s training course was offered. There were 66 people who attended – nine of whom were medical practitioners or medical students. Therefore, this account of history identified a link between psychotherapy to the medical profession but early training courses, perhaps due to a numbers issue, still allowed ‘suitable’ lay people to attend (Cook, 1996). A closer analysis of primary material might illuminate the extra-discursive of the power relations as to who the ‘suitable’ were deemed to be.

Bowden (2001), the only text located that focussed on psychotherapy and New Zealand, does note that psychotherapy in New Zealand has been influenced by international developments: “European, United Kingdom and United States traditions have contributed fundamental ideas which have enabled psychotherapists in Aotearoa to work

within the psychodynamic milieu” (Bowden, 2001, p. 20). This point is noteworthy and shall be returned to in following chapters when looking specifically at the terms transference and counter transference in the scientific discourse on therapeutic sexual exploitation. It is suggested that such overseas ideas as expressed by overseas experts, have contributed to New Zealand’s discursive formation on therapeutic sexual exploitation.

The New Zealand Association of Psychotherapy is still in existence today. Psychotherapy, like counselling, has grown exponentially. On their current website they have approximately 390 members (New Zealand Association of Psychotherapists, 2010). Corsini (2001) compiled a book, entitled *Innovative Therapy* which has 69 chapters, each dedicated to a different innovative therapy. While this is not a New Zealand text, it does indicate there seems to be an ever-increasing expansion in psychotherapeutic modalities. With so many sub-branches of practice it would be a challenge to name them all yet alone adequately describe how they ascribe to tenets of what has come to be termed psychotherapy. Since 2007 psychotherapy in New Zealand has been a registered profession under the Health Practitioners Competence Assurance Act (2003), the implications of which are discussed in chapter eight. For now, it is important to note that this gives the discipline of psychotherapy legal status, as well as a social status, as being a registered bona fide scientific profession. It seems that knowledge-power for psychotherapy has had the ability to multiply itself into political, social and, more recently, legal existence. Yet, it remains unclear whether the profession still maintains that there are some unpreventable mental illnesses that presumably need a different type of treatment, perhaps relying on medical intervention of some sort.

Given the exponential growth in both counselling and psychotherapy one might say power-knowledge has produced choice for the consumer of therapeutic services. Equally, one might say this form of multiplying knowledge-power has created an ever increasing focus and preoccupation on the individual soul. The soul has become the source of the problem and, therefore, the source of the solution for seeming all personal ills. Correspondingly, it could, therefore, be argued that these disciplines have produced a stifling of political action for abuses that are political in nature. Similarly, one might suggest this discourse has produced a reliance on ‘the expert’ to help with healing emotional distress. It might have produced tangible economic benefits for therapeutic practitioners. As Riikonen and Vataja (1999, p.177) noted:

The biggest problem is that the idea of expert-driven therapy gives the competence to the professionals and it leads to believing that only expert-

defined actions are useful or effective. It is an example of spiritual hubris which can easily be turned to material profit.

The inverse of this is reflected in the question, what has the multiplying effect of power-knowledge restricted? Perhaps the socially constructed disciplines, through the multiplying effects of knowledge-power, through the silencing of other discourses, have consciously or unconsciously, attempted to restrict critical examination as to what is problematic and what is healing. It may have repressed the knowledge that individuals, families and communities can heal themselves without third party expert intervention. In exploring New Zealand's discursive formation on therapeutic exploitation one needs to appreciate the socio-political foundations of the disciplines – their origins and functions. This is so one can see to what degree, and in what configuration, power relations might still be operating within the psy-matrix today.

Counselling and psychotherapy as a combined discipline

For the most part, the above has addressed these therapeutic disciplines as separate entities. However, it is debateable whether they are actually distinct professions in practice. Cornforth (2006), Miller (1996) and Bowden (2001) have all discussed this issue and tried to identify possible philosophical and practical differences between the two. Cornforth (2006) provided a thorough account of the varying points of view on the matter. In doing so, she noted that the British Association of Counsellors and Psychotherapists joined both disciplines together in 2000. It is also known that Australia has an overarching body professional association entitled Psychotherapy and Counselling Federation of Australia (Psychotherapy and Counselling Federation of Australia, 2010). Furthermore, there are others in the scientific disciplines that are using the two terms interchangeably (Hetherington, 2000; Pope & Vazquez, 1998; Syme, 2003). Cornforth, (2006, p. 10) in her own work, described therapy as “the work counsellors, psychotherapists or counselling psychologists do with their clients” – thus making no distinction, in practice, between the two professions at all.

In New Zealand, however, the distinct disciplines have retained their separate professional identities, in part, through maintaining their own professional bodies. The New Zealand Association of Counsellors Codes of Ethics in 2002 described the activity of counselling in the following way:

Counselling involves the formation of a professional relationship based on ethical values and principles. Counsellors seek to assist clients to increase their

understanding of themselves and their relationships with others, to develop more resourceful ways of living, and to bring about change in their lives. Counselling includes relationships formed with individuals, couples, families, groups, communities and organisations (cited in Cornforth, 2006, p. 9).

The New Zealand Association of Psychotherapists, on the other hand, described the activity of psychotherapy in this way:

Psychotherapy is a treatment and healing approach for psychological disturbance and dysfunction within an individual and within systems of human relating. Therapy may involve the individual and/or parts of the social network to which they belong, since public and private relationships can range from a state of mild but persistent difficulty to one representative of major dysfunctional disorder. The concern of treatment is therapy of the psyche - which can be understood as the interrelated physical, emotional, mental and spiritual aspects of being human. The foundations of psychotherapy are associated with basic human impulses concerned with existence, meaning and self-realisation (New Zealand Association of Psychotherapists, 2010).

These definitions have a different tone, yet both, it could be argued are interested in improving or teaching clients of service even if couched in language of ‘treatment and healing’ or ‘assisting with understanding’.

Bowden (2001), unlike Cornforth (2006), is unequivocal. Counselling and psychotherapy are fundamentally different professions, drawing upon different skills. Bowden (2001, p. 137) has suggested that psychotherapy is concerned “with the exploration of conscious and unconscious processes” and is thus is a journey about exploring one’s psyche or soul. He went on to suggest that counselling is valuable; its point of difference to psychotherapy is its concern about inter-personal relationships and social issues, rather than exploring an individual’s unconscious. However, he also noted that, in effect, many counsellors are now engaged in front line or trauma type work, conducting psychotherapeutic work, even with little training and few resources (Bowden, 2001). When looking on the New Zealand government Career Services webpage for courses for psychotherapists, the same options for courses appeared for psychotherapy as appeared for counselling. Under this government website no differentiation is made between the two disciplines. Effectively there is one database for training courses that relate to ‘counselling and psychotherapy’, as if they are one professional body (Careers Service, 2010).

Given the above factors and exponential proliferation of both therapeutic modalities there is value in seeing counselling and psychotherapy, at times, as one integrated therapeutic institution. This therapeutic discipline in New Zealand has had intimate links with other psychological-related institutions. This has a direct bearing on researching the discursive formation on therapeutic sexual exploitation. This dissertation will make explicit the professional relationships operating within the psy-related disciplines and the power relations between this collective group of professionals and clients of service. Examining the systemic relationships within mental health services contextualises how the therapeutic institution is part of a broader set of arrangements that are not only used to improve or train, but also to punish. These disciplinary techniques, it will be argued, can be activated in cases of therapeutic sexual exploitation.

The psy-matrix

Sloane, in writing the preface in Hook's, (2007, p. viii) book explained the relationship between the mental health professions, and their combined power, in the following way:

Psychology, both through its practices and through the concepts that justify its practices, operates for the most part as an ideological apparatus. This means that its array of discourses and activities constructs and sustains systems of domination and oppression even as they appear to support self-understanding, and wellbeing. Therapy, counselling, assessment, research, self-help, prevention work, clinic spaces, cases studies and all forms of psy-work *construct* specific forms of understanding and experiences as they operate.

For Foucault, "...psychological knowledge and practice is one of modern society's new strategies for disciplining and shaping the actions of individuals" (Hook, 2007, p. ix).

While this quote does not capture the complexity of Foucault's theory it does refer to two aspects previously discussed in chapter one. Firstly, it refers to the theoretical feature that the psy-matrix, disciplines connected to the analysing the psychological, are a modern force for disciplining and shaping actions of the individual. They are not an impartial, a-political, benevolent pass-time. Secondly, the psy-matrix does not value one group of psy-professionals over another. It does not see one branch of the psy-matrix as being more humane or more effective in the treatment, healing or emancipation of the sick, the damaged or the dispossessed. In accepting this formation, the question is asked: How has the psy-matrix constructed and sustained systems of domination and oppression, for

example, in the area of therapeutic sexual exploitation? While this chapter cannot answer that question in its entirety, it can explore, by employing the principle of exteriority, some of the material effects of knowledge-power. It can question whether power relations operating between its institution and its subjects have been used to silence. The principle of exteriority requires one to take a broader view and to investigate how the psy-matrix contributes to New Zealand's discursive formation.

There may be some working within psychotherapy and counselling who would be appalled to be classified under the same umbrella as psychiatrists and psychologists, as psychiatrists and psychologists might be appalled to be grouped under the same umbrella with counsellors and psychotherapists. Nonetheless, there is some agreement that there is a psy-matrix of sorts. Drewery and McKenzie (1999) indirectly referred to this when noting the hierarchy that exists between the professions, with psychiatrists at the top and counsellors at the bottom. Similarly, a recent magazine article saw the professions as in some way connected (Mindfood, p. 57). The heading was "Follow this guide to decide whether seeing a psychologist, psychiatrist or counsellor is right for you." The article then defined the different skills and treatments clinical psychologists, psychiatrists and counsellors offered. It is interesting to note that at the conclusion of the counsellor's section it read: "A good counsellor will refer clients to a psychologist or psychiatrist if more specialist help is required." This discourse suggests that responsible therapeutic practitioners will work together *with* psychiatrists to ensure that clients of service can get specialised psychiatric treatment.

From personal experience I know that in Mental Health Services, which is part of New Zealand's publicly funded health service, there have been inter-disciplinary teams using their expertise to help clients of service. Psychiatrists, psychologists, psychiatric nurses, as well as therapeutic practitioners, can work as a united team to provide a professional wrap-around service for the individualized person with some form of diagnosed intra-personal disorder. This connection is re-iterated when looking at the New Zealand Mental Health Commission's webpage. Psy-professions are listed for mental health consumers and it is explained how their services might be utilized (New Zealand Mental Health Commission, n.d). Also from personal experience, I know it is not unusual for school counsellors to have a professional relationship with other specialist counsellors, educational psychologists, or with therapeutic practitioners from Child, Adolescent and Mental Health Services. Therefore, it could be argued that the scientific knowledge which perhaps has a tendency to frame 'counselling and psychotherapy' as separate from other

psy-disciplines, might be quite different from implicit knowledge as understood by some clients of service. It might be that there are some clients of service who experience a diverse, and at times, disunited team under the psy-umbrella, that does not take away from the fact that they may still experience a powerful team of experts who can examine their psychological disposition. Furthermore, therapeutic practitioners can call upon their professional psy-colleagues to access an array of treatment options to assist with the treatment of their emotionally disordered client.

Whether one accepts Foucault's theoretical assumptions about a psy-matrix or not, there is already interest within branches of psychology, psychotherapy and counselling, those who are interested in exploring the nature of discourse, the nature of power, knowledge and silence within professional practice (Besley, 2002; Besley, 2005; Cornforth, 2006; Drewery, 2005; Fish, 1999; Hook, 2007; Parker, 1999; Riikonen & Vataja, 1999; Rudes & Guterman, 2007, Strong, 2002, and Swan, 1999). Being open to exploring the less obvious links between these seeming different theoretical orientations to mental health is useful. It is, perhaps, most useful for potential clients of service to have an appreciation of these links and how it may impact upon them. With such material visible, an informed discussion can follow as whether psy-practices, through their focus on controlling the soul, are being used as disciplinary techniques within New Zealand society.

The material effects of the psy-matrix

As chapter one explained, Foucault argued that power-knowledge through its discourse had a social function which was embedded in political and social arrangements (Hook, 2007). By way of illustration, this section will examine the close, but not always transparent, relationship between New Zealand therapeutic practitioners and psychiatry in contemporary times and the possible material effects of this might have for clients of service. It will raise questions as to what, if any, social functions are being met through the western discourse on mental illness. This discussion will begin by briefly describing psychiatry's own socially constructed form of knowledge and practice. The second part of this section will refer to confidentiality clauses in various New Zealand based Codes of Ethics. The material effects of such confidentiality clauses will then be discussed and connected to the power and material effects of the psychiatric-legal profession who between them, have the legal right to detain and 'treat' emotionally distressed people against their will, in effect, indefinitely.

The socially constructed nature of psychiatry

Bell and Brookbanks (2005, p. 183) acknowledged that psychiatry's social construction of knowledge-power has historically been used for abusive purposes. They stated that "Psychiatric treatment has also been used in an attempt to punish, or change the behaviour of groups that society devalues or sees as a threat." They note that gay men, women, ethnic minorities, political dissidents have been treated for doing no more than having beliefs or behaviours that differed from the majority. Orlov (2007, p. 2), writing in the *New Zealand Law Journal*, used the term 'psycho-logic' to describe how psychiatry and psychology as academic disciplines, as sciences, have been "used to explain and justify political acts of oppression, discrimination and breaches of human rights."

An early example of this science in action can be seen by referring to drapetomania, the psychological illness that so called run-away slaves were suffering from. Science devised a cure for their illness. Whipping slaves, it was thought (by those with knowledge-power), would cure them of their drapetomania tendencies. It would be understandable if after being whipped for long enough some of these men and women, lost their knowledge and their souls, and conceded to this discourse about themselves. This example of psychological treatment might seem alarming today. However, as Stevens (2003), a New Zealander commentator questioned, is being sedated with mild-altering drugs, being locked away from people, including your loved ones and being electrocuted without one's consent, really considered a medical form of treatment for intense emotional pain? Or could such scientific treatments be obscuring the abuse of human rights of those who are not conforming to acceptable norms of behaviour in society? One must ask, as Foucault's method requires, are such scientific psychiatric treatments, more progressive, an advancement of science, from whipping human beings who attempted to escape from their painful experiences of degradation?

More contemporary examples about the inter-relationship of power-knowledge-silence in mental health have been highlighted by Bell and Brookbanks (2005). They provided accounts of how gay men and women have been 'legitimately' tortured because of their supposed mental illness for not conforming to societies norms. It was not until the mid 1970s that changes started to emerge in western psychiatric literature that homosexuality was not really a treatable mental illness. It was also recorded that recently in 1987 the Working Group for revising the Diagnostic and Statistical Manual of Mental Disorders III (DSM III) suggested a new disorder: 'self-defeating personality disorder' to describe women who were staying in abusive and violent relationships. However, feminist

commentators criticised such a definition, suggesting that such women, experiencing depression and anxiety would be admitted to hospital and could be forced to take psychotropic medication, perhaps be subjected to therapy groups or ECT, rather than dealing with the actual social and political issues that gave rise to the problem in the first place (Bell & Brookbanks, 2005).

The socially constructed discourse that constitutes mental illness or a mental disorder places emotional distress as an internal, individualised illness that can be fixed, managed or contained by brain surgery, the admission of electric shock or drugs, or personalised therapeutic intervention. The rationale for this is that such treatments are scientifically proven to be in the patient's best interest. If this is so, this information should be readily available for clients of service, in Codes of Ethics and in various forms of information media. I would suggest that there seems to be a silencing in therapeutic literature, as there is in wider society, on the nature and extent of involuntary committal procedures and practices in New Zealand. However, as chapter four will explain, for clients of service who have been sexually exploited in the therapeutic environment, these treatment avenues may be suggested or enforced upon them to help them heal or manage their apparently problematic ways of dealing with emotional distress.

The relationship between involuntary committal and therapeutic practice

Chapter six will explore current and historical Codes of Ethics of four New Zealand counselling and psychotherapy associations. For the purposes of this chapter, what can be noted is that all these Codes of Ethics refer to the need to respect a client's confidentiality. Yet, in terms of serious or imminent risk to danger to self or to third parties – confidentiality may be broken (refer Appendices One and Two). While each association words this slightly differently, it begs the question, who will therapeutic practitioners contact in such dire situations? Will they have ready access to a third party's contact details: a neighbour's phone number, a family member's phone number, an employer's phone number? At times of perceived serious or imminent risk to clients of service or others, due to a client's distressed emotional state, is a therapeutic practitioner going to ask the neighbour, employer or family member to deal with it?

There is no one answer and contacting third parties would no doubt depend upon many variables. However, one proposition is that two very likely contact points in cases of perceived emergency will be the New Zealand Police and The Mental Health Crisis Team, both of whom have the capacity to incarcerate someone against their will. The first

reference to this in exceptions to confidentiality clauses that I could locate was in the 1991 Draft Code of New Zealand Association of Counsellors Code of Ethics. It stated:

Exceptions to [confidentiality will occur] when, there is clear and imminent danger to the client or others. This includes circumstances where the client's competence to make a decision is obviously limited. In these circumstances the counsellor shall take reasonable personal action or inform responsible authorities (cited in NZAC Newsletter, 1999, p. 34).

In current Codes of Ethics from the four New Zealand therapeutic associations all noted that confidentiality could be breached if there was a risk of serious harm to self or others, although they all worded this slightly differently. Interestingly, under NZAC Code of Ethics (2009) exceptions to confidentiality clause 6.2, there is no mention of therapeutic practitioners contacting appropriate authorities: "Exceptions to confidentiality occur when there is serious danger in the immediate or foreseeable future to the client or others [and] the client's competence to make a decision is impaired..." The section entitled 'The Counselling Relationship, when referring to general issues of safety does, however, include reference to contacting authorities: "Counsellors shall warn third parties and appropriate authorities in the event of an imminent threat of serious harm to that third party from a client" (NZAC Code of Ethics, 2009, section 5.1.d). NZAC's discourse has changed or it has become more obscured. Counsellors perhaps will not contact authorities if clients of service are perceived to be an imminent threat to their own safety. Although, section 5.1.a does state "counsellors shall take reasonable steps to protect clients from harm" (NZAC Code of Ethics, 2009). It is unclear whether that does or does not include contacting appropriate authorities. It leaves open to question, then, under what conditions NZAC changed its wording in this regard. It leaves open to question who therapeutic practitioners might contact, regardless of their particular therapeutic orientation, in cases of perceived imminent threat to client of service safety. That remains unsaid.

The next section attempts to make more transparent what might happen to clients of service if police or mental health authorities are called due to a client's or ex-client's perceived level of safety. A client of service may be compulsory committed to a psychiatric ward and undergo what is termed treatment against her or his consent. This is part of New Zealand's discursive formation which does not readily feature in academic texts on sexual relations occurring within therapeutic environments. It may, however, be implicit knowledge that is known but unspoken in other sectors of society. The frequency of this situation is not known at present, but what is known, again, perhaps implicitly, is that New

Zealand law allows someone to be detained and ‘treated’ against their will if that person is exhibiting significant levels of emotional distress and it is perceived that they are in danger of hurting self or others. That can apply to clients of service who are highly distressed as a result of therapeutic sexual exploitation.

The social functions for the discourse on the mentally disordered

Western society’s discourse to describe the mentally disordered, or the insane, the mad, the possessed, or the crazy has no doubt changed over time. Today, I would argue that in New Zealand the term ‘mental illness’ is applied most readily to those experiencing high levels of emotional distress. I would also argue, however, that this is a socially constructed discourse which can be open to other interpretations. To illustrate this point I include an alternative discourse about mental illness that is less likely to appear in the scientific psy-texts, on television advertisements, in government based mental health websites, or in weekly magazines. It comes from the introduction in Foucault’s *Madness and Civilization*.

A History of Insanity in the Age of Reason:

Foucault makes it quite clear that the invention of madness as a disease is in fact nothing less than a peculiar disease of our civilization. We choose to conjure up this disease in order to evade a certain moment of our own existence – the moment of disturbance, or penetrating vision into the depths of ourselves that we prefer to externalise into others. Others are elected to live out the chaos that we refuse to confront in ourselves. By this means we escape a certain anxiety, but only at the price that is as immense as it is unrecognized (Foucault, 1961/2008, p. viii).

This definition is more akin to my own interpretation of madness; however, the task of this section is to explore how scientific discourses on mental illness have a social purpose which is embedded in political and social institutions. Therefore, I will return to examining what might legally happen to clients of service who are in an extreme state of emotional distress and authorities called. The value of turning to the law, as was stated in the methodology chapter, is encapsulated in Foucault’s principle of exteriority (Foucault, 1969/1972). The worth of operating across disciplines, in this case, the law, is that without doing so, the danger would be that one “[doesn’t] see the interconnectedness and networks of material-to-textual and textual-to-material directions of power [then one’s] own critical work may become instruments of the discourses they are attempting to critique” (Hook, 2007, p. 129). In other words, the material effects of a certain practice, such as

therapeutic sexual exploitation, can become lost and without this external legal marker, and any new work produced on this topic could remain limited within the pre-existing discourse, perpetuating the previous power-relation arrangements within the psy-matrix.

Currently in New Zealand, under the Mental Health (Compulsory Assessment and Treatment) Act 1992 a person may be compulsorily detained to be assessed and treated for a period of time that can be continually renewed. The compulsory assessment process is supposed to ascertain whether the person concerned has a 'mental disorder' as defined by the above Act. Mental disorder is a legal term and, in theory, does not equate to any diagnostic term that may be used by psy-professionals in the course of their professional work (Mackenzie & Shirlaw, 2002).

There are many possible stages before mental health services need a legal order to compulsory detain and treat someone who is emotional distressed. A general practitioner can sedate someone against their will. If that distressed person refuses to undergo a psychiatric assessment the Police can use physical force to ensure that person does have a psychiatric assessment. After that initial assessment, if psy-professionals believe that it is in the best interests of that person, they can detain and treat that person against their will for a period of up to 19 days. Physical force can be used by hospital staff to ensure client-patients receive their treatment. To be detained and treated for a period longer than 19 days psychiatric professionals now need a judge to assess whether a compulsory treatment order is required. It is only a judge who can place someone under a compulsory treatment order and in doing so he or she needs to refer to Section 2 of the Mental Health Act 1992. However, it needs to be remembered that the judge will consider the professional opinions of psy-professionals in making his or her decision. A person can be defined as having a mental disorder in the following way:

An abnormal state of mind (whether continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, or such a degree that it:

- (a) Poses a serious danger to the health and safety of that person or of others;
or
- (b) Seriously diminishes the capacity of that person to take care of himself or herself (Mental Health Act, 1992)

If a person is committed for subsequent re-assessment and is under a compulsory treatment order (that can be either a community treatment order or an inpatient treatment order) that person cannot refuse any treatment during the assessment period and for the first month.

The Act requires that the treatment must be in the person's best interests, be therapeutically appropriate, and be the least invasive method for treating the disorder – and, again, if the client-patient is resisting, Police or hospital staff can use physical force to apply therapeutic treatments (MacKenzie & Shirlaw, 2002). The possible forms of therapeutically appropriate, yet compulsory, treatment may include psychotropic medications, electroconvulsive therapy (ECT) talk therapy (that is counselling and psychotherapy sessions) and seclusion. A fourth treatment option, brain surgery, is still permitted, but only with the patient's consent and after a number of other regulations has been met (Bell and Brookbanks, 2005).

Regardless of the least-invasive therapeutic treatment clause, there are significant consequences for being a committed person under the Mental Health Act. Edwards (2008) traced the historical and current legislative restraints placed upon persons who have previously been a committed person under this Act. He cited over 52 New Zealand Acts which place possible restrictions on the lives of people who have had defined for them, under the Act, their 'mentally disorder' status. One example is in the Education Act 1989:

Section 103 of the Education Act 1989 provides:

(1b) A person who –

Is mentally disordered (within the meaning of the Mental Health and Compulsory Assessment and Treatment Act 1992) may not become an elected, appointed or co-opted member.

The thesis of Edward's (2008) argument was that there are statutorily sanctioned forms of discrimination against people who have, or have had, a 'mental disorder'. Furthermore, Edwards suggested if the Education Act 1989 was interpreted strictly, such a mental disorder might apply to a significant number of current members sitting on school boards but who have never been placed upon a compulsory treatment order. There are likely to be many people who have experienced delusions or disorders of mood where safety and care were likely to be of concern, but for whatever reasons, they avoided being committed to a psychiatric hospital. The point being that once someone, perhaps a client of service, receives a compulsory treatment order the material effects of such an order can be experienced for years to come.

The relevance of this discussion to the research topic is that clients of service who are experiencing extreme levels of emotional distress perhaps due to therapeutic sexual exploitation could find themselves, through the intervention of a therapeutic practitioner, or through someone else, undergoing compulsory therapeutic 'treatment'. Their distress, as

was the distress of the juvenile delinquents and ‘broken home’ people, are deemed to be the problem. They are then treated accordingly by mental health practitioners who have socially constructed ‘disorders’ as intra-personal-medical issues. The power of this discourse has been multiplied and strengthened with the weight of the legal system. This would seem to suggest that distressed clients of service, as atomized, single units have a significant task to alter established power-relations between themselves and the wider psy-network. Psy-care [sic], including the associated disciplines of counselling and psychotherapy, are disciplinary technologies of power. Foucault’s concept of technologies of power, I would argue, encapsulates the subtle and silent workings of New Zealand’s mental health arrangements:

The efficacy of the control exercised by the disciplinary agent is contingent on a basic requirement: their power must be total power... Here it is necessary not only to cede the psychiatrist final authority in issues of treatment, but to completely divorce the patient from their usual familial and societal domain... (Foucault, cited in Hook, 2007, p. 19).

Hook (2007, p. 19) continued, “...a relation of secrecy particularly in relation to matters of technique, also [prove] to be imperative.” Given the legal powers of psy-professionals to ‘detain and treat’ and the lack of full transparency, it seems, about what might be the material effects of breaking confidentiality, it seems plausible to consider an alternative discourse: psy-professionals are being employed as agents of control, as disciplinary technologies of power, to maintain social order.

The Discourse of Resistance

Stevens (2003) added depth to the above commentaries. She recounted her personal experiences of being an involuntary patient with the New Zealand mental health system. In the section entitled ‘Myth of Psychiatry’ she began by stating: “I defy anyone to find mental health in a mental hospital, especially if the process of admission is involuntary and involves physical violence, abuse and deceit on the part of staff and significant others” (Stevens, 2003, p. 99). A quote from Halleck captures the dangers inherent in mental health and the work of psy-professionals:

Another way professionals impose their beliefs under the guise of producing ‘mental health’ is by considering the anxiety and dissatisfaction as internal, intra-personal problems... In treating patients with conflicts between self and

society, the therapist almost inevitably tries to change the client (cited in Stevens, 2003, p. 109).

If one had ever assumed that the establishment and current practice of counselling and psychotherapy was, and still is, a political response, a more humane response, against the inhumane psychiatric treatment of 'dis-orderd' people, then that is erroneous. It is my contention that counselling and psychotherapy are additional yet more subtle, treatment processes used to discipline and silence those who refuse to conform, who pose a risk of exposing the political nature of knowledge-power and its material effects. Counselling and psychotherapy as therapeutic disciplines are part of, not separate from, the psy-matrix, and the awesome material effects they produce. However, as Stevens (2003) shows such discourse and its practices, while not an easy task, can be challenged.

Conclusion

Recently I recalled television advertisements fronted by John Kirwin, a famous ex-All Black who suffered from what is commonly called depression. As part of this advertisement he talked of his experiences of what is commonly termed depression and his immense fear that he was going mad; he even thought he might end up being taken away. It occurred to me that being frightened that one might be taken away when feeling emotionally overwhelmed and experiencing unexplainable occurrences is, in fact, very rational. That is not a sign of madness; it is an accurate assessment of what has happened and what can currently happen. I think this information does not regularly feature in the public domain; but it is implicit knowledge and it is something to be terrified about. Perhaps the more pertinent point is why do scientific texts on therapeutic practice and television advertisements, which normalize and perpetuate the socially created discourse on mental health disorders, disconnect themselves from that aspect of the national mental health strategy.

The disciplines of counselling and psychotherapy and their emergence in New Zealand have been social and political constructions, in part, influenced by various conditions of possibility: the Government, the church and professional self-interest. Their appearance as scientific disciplines was only validated through their connection to other psy-professions. Today, these therapeutic professions are still closely linked to their psychocousins. The material effect of this history and practice, it is argued, has had a disciplining effect, focussing on the individual soul as the problem - and the solution - for personal

distress. Critical analysis about external power relations between itself and its subjects has been stifled through the atomizing and individualizing nature of therapeutic practice.

The following chapter undertakes an effective history of power relations between the institution of therapeutic practice and its subjects – specifically as it pertains to the scientific discourse on therapeutic sexual exploitation. Linking this chapter with the upcoming study on therapeutic sexual exploitation are Foucault's (p.86) words: "Power is tolerable only on the condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms." The discourse on therapeutic exploitation is not divorced from the mechanisms of power inherent in the power relations of psy-disciplines to discipline its subjects.

Chapter Four: Effective History

Ensuring Change Has A Content

Introduction

The important thing is to give the monotonous and empty concept of ‘change’ a content, that of the play of specified modifications. The history of ‘ideas’ or ‘sciences’ must no longer be written as a mere checklist of innovations, it must be a descriptive analysis of the different transformations effectuated (Foucault, 1980/1991a, p. 58).

This chapter will be attempting to give ‘change’ a content; to provide a descriptive analysis of the transformations effectuated by changes within the discursive formation of therapeutic sexual exploitation. As in the previous chapter, this chapter will employ Foucault’s methodological principle of reversal. It will be shown that this discursive framework on therapeutic sexual exploitation, like the therapeutic disciplines, has been created due to various conditions of possibility, least of which is due to power relations operating within this scientific domain.

An effective history will be undertaken to illustrate Foucault’s theoretical feature that ‘new’ knowledge is created when there is a change in power relations. In this instance an effective history will be used to identify changes, over time, to the overseas discursive formation on therapeutic sexual exploitation. The principle of discontinuity will be utilized to examine for inconsistencies, anomalies and contradictions in the historical patterns of this discourse. While this chapter focuses on overseas discourse, it does so because New Zealand’s discursive formation on therapeutic sexual exploitation has likely been influenced by international factors and such influences will be discussed in the remainder of the dissertation.

This chapter, since it seeks to give change a content, has been organised into four sections. The first three sections will discuss the stages of change, the different contents, which have been produced as scientific discourse on therapeutic sexual exploitation. Metaphorically, I have referred to these sections as the changing tides in the overseas discourses on sexual relations occurring within therapeutic environments. However, even this comes with contradictions. The incoming tides do not reproduce a tidy chronology of discursive changes and in a way each new tide is not totally distinct or separate from the other. The first incoming tide is primarily concerned with the period of time up to and including when scientific therapeutic discourse began naming the issue of sexual relations

occurring within their local therapeutic environments. In particular this section will draw on the experiences and seminal works of Russell (1993) and Rutter (1989), two early therapeutic practitioner-academics researching this issue in their local areas, Great Britain and the United States, respectively. They discussed their experiences and the earlier experiences of others who had attempted to study therapeutic sexual exploitation within their local communities. Given that this chapter is undertaking an effective history it will also locate ethical standards around sexual relations occurring between practitioner and client of service within an historical framework. In particular, it will explore the conditions of possibility that influenced Freud's therapeutic work on transference and counter-transference.

With the changing of the discursive tide, the second section focuses on the research which has explored the extent and impact of sexual relations occurring within therapeutic environments. This occurrence meant that sexual relations in therapeutic environments had not only been named as an ethical issue belonging to the therapeutic professions, but also that it was an issue important enough to study the material effects this ethical breach had for clients of service.

With some of this history in place, the following section explores the most recent changes to the Western scientific discourse by examining two contemporary examples of overseas therapeutic Codes of Ethics. In doing so, it becomes apparent that the current scientific ethical standards of practice regarding sexual relations occurring between clients of service and their therapeutic practitioner have changed markedly since Freud's time. The principle of discontinuity seeks to examine whether new knowledge has been rationalised upon progressive scientific advancement, spring-boarding supposedly new knowledge from old knowledge. The principle of discontinuity asks, is this progressive knowledge really new or does it serve to cover up a series of events, still based upon foundational assumptions.

This chapter concludes by referring to the extra-discursive within the overseas discourses on sexual relations occurring within therapeutic environments. It provides a case study of one political organisation established to challenge the power relations that inherently exist between clients of service and psy-practitioners, including, counsellors and psychotherapists. It is this section which provides a window into the extra-discursive, the content behind change, that otherwise appears to remain silent in academic texts on therapeutic sexual exploitation. Yet, it is argued, this knowledge has been, and will be, an

influential feature on the national and international discursive formation on therapeutic sexual exploitation.

Section 1: The Incoming Tide

The challenges of naming therapeutic sexual exploitation as a local issue worthy of research

Russell (1993) and Rutter⁷ (1989) were two of the early Western therapeutic practitioners to write publically about the issue of sexual exploitation of clients within their own local professional groups. Both authors noted at the time of conducting of their research they were surprised to learn that there was almost no previous local literature on the topic. Why was there so little written discussion on this ethical issue by the late 1980s? Russell (1993) suggested that in the 1980s the Western world saw an explosion of media attention on the issue of sexual abuse. Indeed, Western science had responded to this issue by employing a central strategy to help the sexually abused child or adult: the deployment of psychotherapeutic and counselling experts. Given this, Russell thought it might have been too disturbing to consider that some clients of service had been re-traumatised by being sexually exploited within the very scientific construct of therapeutic expert that was supposed to assist with this sort of disturbing problem.

Rutter, (1989) on the other hand, shared his personal story to explain why he, as a psy-practitioner, had not previously considered therapeutic sexual exploitation as a professional issue. He had believed that the sexual boundaries between a doctor and patient were impermeable. This naive faith came crumbling down due to two reasons. He very nearly crossed the line and sexually exploited one of his female clients and secondly, he found that one of his mentors had been frequently having sexual relations with his female clients. The combination of these events shook him to his core. Who was he - really? Who was his mentor - really? What was his profession about - really? Rutter said:

I assumed everyone in my professional community also observed this prohibition. The only doctors and therapists who had sexual relations with patients were, I was sure, confined to the criminal or lunatic fringe, such as the surgeon who sexually assaulted his female patients after placing them under anaesthesia, or the occasional therapist who would establish a “therapeutic” commune conveniently populated by women willing to be his sexual partners.

⁷ Rutter (1989) was a psychiatrist practising Jungian psychotherapy. He uses the word patient to describe a person with whom he has a professional therapeutic relationship. The word patient is not used in the narrower sense of a person who is in hospital.

It took me nearly a decade to stop believing in the myth of the beneficent doctor. I discovered instead that sexual exploitation by men of women under their care or tutelage is not unusual and in actuality, quite common (Rutter, 1989, p. 1).

What Rutter was being challenged about, and what he equally challenges his readers about, is the desire to believe in stereotypical figures, in this case either the beneficent doctor or crazy commune leader. It is unsafe practice to believe in a discourse which has a tendency to suggest it is 'only those types' who might sexually exploit their clients. As section two will show, such stereotypical thinking is often misplaced.

A research finding that Rutter (1989) and Russell (1993) both came to independently was that therapeutic sexual exploitation of clients had been going on for some considerable time, and that such practices were well known within the profession but silently condoned. This situation would support Foucault's notion that scientific knowledge and implicit knowledge is not always consistent (Scheurich and McKenzie, 2005). When asking their respective colleagues and peers about their experiential knowledge in this area, both researchers experienced a strikingly common response: 'Oh, I know somebody who that happened to'. It appeared to be commonly known within the profession that therapeutic practitioners were sexually exploiting their clients of service, yet this was not readily reported, not researched, not openly discussed, and certainly not framed as a professional problem. It seemed that the majority of scientific therapeutic experts had little interest in turning their attention to this particular form of abuse and disorder.

How had that sort of systemic silencing been understood? Syme (2003) wondered if whether those in therapeutic professions might have erroneously formed the belief that to take formal action against their peers in such situations might indicate a judgmental response, which is a quality that a therapeutic practitioner is not supposed to exhibit. Another hypothesis might be that therapeutic practitioners have been trained to rehabilitate those who sexually exploit rather than to punish them. Perhaps, as a result of their training, a belief developed that punishing fellow therapeutic practitioners for breaching established professional standards of conduct had no place in a humane society. This is speculation; additional primary research might be useful for understanding this particular phenomena.

Chapter three offered a condition of possibility for why this issue may have remained silent for so long in the United States and Great Britain. Client of service voices, voices of the distressed, do not carry the same institutional weight as those credited with professional, expert knowledge. For a client to openly share their distress may have

increased their chances of being medicated or hospitalised. Alternatively, if a client of service did show emotional distress, he or she may have been advised that they needed more therapeutic assistance. This would reinforce the psy-discourse that the distressed person is the problem. It is the client of service who needs attention, who needs to change through paying for the assistance of therapeutic professionals. This might have increased the likelihood that a political issue was reduced to a private issue; the scientific discourse of which is controlled by therapeutic practitioners. However, what Russell (1993) and Rutter (1989) were raising is how had it come to pass that therapeutic practitioners had consciously, or unconsciously, permitted through their silence, sexually abusive behaviours to occur within therapeutic environments?

The productive forces of knowledge-power in therapeutic sexual exploitation

One possible answer to the above question may be offered through investigating the history into researching the topic of therapeutic sexual exploitation. Rutter's (1989) research uncovered that there had been previous efforts by psy-professionals to raise this issue, but that they had been met with resistance by their own psy-associations. A journal article published in 1970 by Dr. Charles Dahlberg in *Contemporary Psychoanalysis* was one of the earliest studies in the professional literature about sex between patient and therapists, but even getting such material published proved to be a challenge. Dahlberg stated:

It is surprising that more has not been written about [sex between therapist and patients]. I should note here that I have had trouble getting this paper accepted by larger organisations where I had less, but still considerable influence. I was told it was too controversial. What a word for a profession that talked about infantile sexuality and incest in Victorian times ... 'Too hot to handle' [was] a more likely meaning in this instance (cited in Rutter, 1989, p. 33).

Rutter (1989) also gave an account of when Gartrell, Chair of the American Psychiatric Association's Committee on Women, proposed to survey the incidence of sexual exploitation within the profession. The association not only denied funding but refused to allow that the survey be conducted under its auspices, citing fear of adverse publicity. To conduct such research Gartrell and two other peers had to work 'outside' the walls of their profession. In Rutter's words, "I was beginning to see how this kind of suppression mirrors the secrecy urged upon its victims" (Rutter, 1989 p. 33). This is an example of how institutional power can be used to silence voices, ensure material events

are obscured, whilst maintaining the hold over knowledge-power. This is one example of the operations between silence, knowledge and power, in this instance, working within the therapeutic disciplines.

Syme (2003), in undertaking her research into dual relationships in counselling and psychotherapy, acknowledged the important contribution Rutter (1989) had made in the area of sexual dual relationships. She commented on the levels of denial and collusion that had previously existed in the psy-professions around therapeutic sexual exploitation, and referred to other cases where practitioner-researchers had faced significant issues when wishing to bring this topic to public attention. Syme (2003, p. 11) noted through secondary sources (Garrett, 1994) Butler and Zelen had been threatened with expulsion from their psychotherapeutic association, while Forer's material, it was reported (in Bouhoutos, 1983) was actually suppressed.

My own experience in researching this topic initially presented with some challenges. At the very beginning of this research process I received written notification from the Associate Dean of Postgraduate Studies advising me that no supervisors were available for me to undertake this particular study and that I should complete my Masters by coursework. Thankfully, after engaging in further dialogue, the University found their way through this barrier and two staff agreed to supervise me thus allowing this research to be undertaken. That is something I remain grateful for. What can be noted is that given the politically sensitive nature of examining therapeutic sexual exploitation, as a topical and possibly systemic professional issue, it is perhaps not surprising, that in some circumstances, researchers have been met with resistance from those with institutional power. This is an example of the circular relationship between knowledge and power. Foucault's methodologies require, in Hook's (2007, p. 76) opinion, a vigilance of the productive circularity of knowledge-power-knowledge; he advised that one proceeds "...on the assumption that operations of knowledge cannot but effect relations of power and that power engenders its own brand of knowledge." Early pioneers in researching therapeutic sexual exploitation experienced the effect of power relations and how power can engender its own class of knowledge. Perhaps drawing from implicit knowledge, Russell (1989) and Rutter (1989) knew that despite there being little formal scientific knowledge on this topic, this was not necessarily an indication that there was not an issue worthy of research. For those who see value in Foucault's ideas, silences in academic knowledge might indicate quite the contrary, the nature of masked practices and subjugated voices.

Possible Beginnings to the Ethical Concept of Therapeutic Sexual Exploitation

This chapter is, in part, attempting to refute a scientific origin around the current discourse on ethical standards relating to therapeutic sexual exploitation. It is now timely to turn attention to how ethical standards around sexual relations between therapeutic practitioner and client of service might have emerged. Schoener (n.d.) provided an historical account of the ethical issue of client/practitioner sexual relations. Quoting Bracelend, he suggested that the Hippocratic Oath might be a beginning point. The Oath stated:

...with purity and holiness I will practice my art Into whatever house I enter I will go into them for the benefit of the sick and will abstain from every voluntary act of Mischief and Corruption and further from the seduction of females or males, of freemen and slaves.... (Schoener, n.d.)

Rutter (1989, p. xi) also suggested that the ethical issue of client/practitioner sexual relations could be traced back to the Hippocratic Oath. In quoting another segment from the Hippocratic Oath:

I swear by Apollo the physician and by Aesculapius to keep the following oath:
I will prescribe for the good of my patients and never do harm to anyone. In every house where I come I will enter only for the good of my patients, keeping myself far from intentional ill going and all seduction, and especially from the pleasures of love with women or men, be they free or slaves.

Pope and Vasequez (1998, p. 160) agreed; they referred to the Hippocratic Oath and stated “one of oldest mandates in the health care professions is the prohibition against engaging in sexual involvement with a patient.” Although in a slightly different scenario, Moreno (1962) the founder of psychodrama, a form of psychotherapy, dedicated a small but complete book to highlighting the need of therapeutic practitioners, including group members of psychotherapy, to adhere to the principles of the Hippocratic Oath. He stated that “.. but like the physician who is bound by the Hippocratic Oath, we are bound as participants in this [psychodrama] group, not to reveal to outsiders the confidences of our patients...” (Moreno, 1962, p. 3).

It seems that contemporary codified therapeutic ethical standards, particularly those concerned with sexual behaviours, have arguably been built from the Hippocratic Oath. This suggests that since its inception, counselling and psychotherapeutic professionals, like other psy-professions, have had awareness that sexual relations with one’s clients are inappropriate and professionally unethical. This raises the question how then did

therapeutic professionals respond when their peers had breached this established principle of ethical practice?

Russell (1993, p. 5) suggested that there developed a professional discourse which sought to rationalize sexual encounters *as* actually being a therapeutic technique. She reported that in the early days of psychotherapy “female patients were stimulated in their hysterogenic zones” which sometimes reached a state of orgasm. Such techniques were often conducted in public, and apparently Freud witnessed many such demonstrations. Other authors (Rutter, 1989 and Syme 2003) commented on the fact that many of the early eminent psychotherapists had sexual encounters with their clients. Names included were: Ferenczi, Reich (who claimed that satisfactory sexual release was the prime goal of therapy), whilst Jung was reported to have had sexual relationships with two female patients (Rutter, 1989). Russell (1993) suggested that Perls seemed to have believed that it was essential to allow any ‘real encounter’ including those of a sexual nature with anyone – either in or out of the therapeutic relationship. Moreno is known to have had at least one sexual relationship with a client of service, a trainee (Blatner, 2000). Syme (2003) makes mention of Rank, Spielrein, Wolf and Rogers, early eminent psychotherapists, all of whom were known to have sexual relationships with their clients. This seems to suggest an inconsistency between the established scientific discourse about ethical standards of professional behaviour and the seemingly accepted behaviours of eminent therapeutic practitioners.

Foucault (1969/1972, p. 149) suggested that the history of ideas usually credits itself with coherence and congruency. He argued that if the history of ideas “happens to notice an irregularity in the use of words, several incompatible propositions ... then it regards as its duty to find, at a deeper level, a principle of cohesion that organizes the discourse and restores to its hidden unity.” In this instance, I would argue that the incongruence between scientific knowledge and implicit knowledge would have to be attended to by: silencing implicit knowledge and/or by rationalising, through foundational science, the behaviours of exploitative therapeutic professionals. Transference and counter-transference, as scientific terms, could have become a principle of cohesion for this anomaly between established ethical standards of practice and therapeutic sexual exploitation.

Freud's Scientific Creation: Transference and Counter-Transference

Freud's creation of the scientific terms transference and counter-transference provided a rationale for what was then becoming public information: psychotherapeutic

practitioners were having sexual relations with their clients. The term counter-transference only exists because of the socially created term, transference, and transference is intimately linked with the aim of psychotherapy. The notion of transference was created by Freud. Rutter (1989, p. 43) explained transference in the following way, as being:

the powerful feelings that patients develop towards their therapists. Transference feelings are in some ways a re-experiencing of past emotional dynamics within the family, but in other ways they look to future possibilities for developing new and healthier emotional dynamics... The therapist draws these feelings out of clients because of the power he [sic] has either to reinjure his [sic] patients to relate to them in a way that will free them from the wounds of the past.

While transference itself is a construction, counter-transference did not evolve due to objective scientific analysis, but in response to a professional crisis. At the time Freud created counter-transference in 1915, including sexual transference⁸, he did so “when the field of psychoanalysis was under attack by the public. Some of these attacks centred on reports of sexual experiences between analysts and their patients” (Ladson and Welton, 2007, p. 48). Sexual relations between a therapeutic practitioner and a client of service could now be rationalised, to some degree, as a scientific occurrence. Sexual relations might not have been seen as professionally appropriate behaviour, but it seemed to fall short of being described as professionally unethical, exploitative or negligent behaviour because it was placed within a scientific construct. The psychotherapist concerned only behaved that way due to the ‘mishandling’ of counter-transference issues. The relevance of this history to the exploring New Zealand’s discursive formation on therapeutic sexual exploitation will be made apparent in the following chapters. However, how professional therapeutic associations have responded to the therapeutic sexual exploitation has, over time, been intimately connected to the foundationalist constructions around the terms transference and counter-transference. What is important to note is that this discourse did not emerge devoid of personal, professional and political interests.

The early experts of psychological healing were not averse to sexually exploiting their clients’ emotional vulnerabilities, although the early eminent therapeutic practitioners did not frame it that way; as the second tide will reveal, neither did many of the therapeutic practitioners that came after them. It has been a change in power relations that has brought about the change in the discourse of such matters. Put another way the discourse and

⁸ Sexual transference will be explained in more detail in chapter seven.

knowledge creation on therapeutic sexual exploitation has been influenced not so much by science, *but by the power to silence*. Changes in the discursive formation on therapeutic sexual exploitation come with content, as the following section will show.

Section Two:

The tidal turn: professionals defining the extent and impact of therapeutic sexual exploitation

In singling out Russell (1993) and Rutter (1989) I would not want to leave the impression that they have been the only early contributors to this area of Western practice. Others such as Pope (1988) and Vasquez (1988) also discussed the prevalence and impact of sexual abuse of clients of service by therapeutic professionals. Pope (1998) also traced earlier attempts by other professionals to address this issue. Even in 1977 Davidson was reported to have called therapeutic sexual exploitation as “the problem with no name” (Pope, 1998). However, it was Russell (1993), in my opinion, who most clearly expressed the responsibilities incumbent upon therapeutic practitioners, to educate, understand and challenge themselves and their colleagues about their own practices when she said:

It is incumbent upon the professions concerned to see that this problem is both owned and addressed by them.... I would argue we have a responsibility to ensure that offending practitioners do not continue sanctioned practice. Further we must undertake to do as much as possible towards preventative practice, to engender a forum for practitioners to declare uncertainties and dilemmas, to raise awareness of the problem and to introduce what strategies we can (Russell, 1993, p. 146).

Similarly, in more recent times, there are others who have shared an interest in learning and teaching about ethical standards (Corey, 2008; Goodrich, 2008; Pepper, 2007; Pope 1988; Webb, 1997). However, such academic writing is more directed towards the needs of practitioners. Such work seems to be primarily about keeping practitioners informed, and to some degree safe, as to what now constitutes ethical and legal practice in this area. That is not inappropriate in and of itself but such writing is not driven by the needs as expressed by clients of service. Clients of service who have been sexually exploited in a therapeutic setting might have quite different priorities about what they would seek to study and what information they might offer for their community of interest. So, in providing the following overview of research, it is noted that these research findings

are primarily from the point of view of therapeutic practitioners for therapeutic practitioners.

Data Gained Through the Self Reporting by Therapeutic Practitioners

The following research data was discussed by Syme (2003). She noted that it came with limitations. The various research pieces which others had previously conducted and in which she was discussing had been carried out by relying upon self-reporting by psy-professionals. These studies were not solely drawn from the counselling and psychotherapeutic professions, some research pieces were drawn from the other psy-professions who were also practicing psychotherapy. Therefore, for this dissertation, relying upon such secondary sources also comes with its limitations. Nevertheless, it is hoped this information provides a general picture of how the research has informed knowledge-power, and how, in collecting such data, it is content behind the change, which has made sexual exploitation by therapeutic practitioners as a 'sayable' occurrence, at least overseas.

Syme (2003), in quoting secondary sources, noted that surveys conducted in the United States in the 1980s suggested that 6 – 7% of therapist's reported having had sexual intercourse with patients and 3 – 13% had reported having erotic non-intercourse contact with patients. Another study found that 8% of therapists had reported having sexual relationships with their clients (secondary source, cited by Garrett, in Syme, 2003). Syme (2003), reported upon Garrett's research in the United Kingdom in the 1994 as to the self reporting by psychologists of sexual contact with clients. Again, 8 % of psychologists reported having some form of sexual contact with their clients. By the 1990s the culture had changed and there was more public discussion about sexual abuse of those in powerful positions and Syme (2003) wondered whether this may have impacted upon the honesty for self disclosure, perhaps masking the extent of the issue. Further studies sought a way around this possible dilemma and asked how many psychologists had treated patients who had previously had sexual relations with a psy-professional. The result recorded that 22% of psychologists has worked with someone who had been sexually exploited by a therapeutic practitioner. Furthermore, forty percent of psychologists reported having known of other psy-professionals who had sexual contact with their clients or patients (Syme, 2003, pp 12 - 15).

Another finding of one of Gartrell's study from the United States revealed that a therapeutic practitioner who has sexual contact with one patient is likely to reoffend. Thirty

three percent of practitioners who reported having had sexual contact with a client had done so with more one than one client, and one reported having sexually exploited as many as 12 clients. In the United Kingdom research undertaken by Garrett in 1994 asked a similar question: 42% of psychologists who had reported having sexual relations with a client, said it had only happened once. Two thirds of the respondents in this study chose not to state how many clients they had had sexual relations with (as reported in Syme, 2003, p. 13).

According to Syme (2003) again, in Garrett's study published in 1994, 41% of cases where therapists had reported having sexual relations with clients these breaches had not been reported to employers or to any professional association. This is despite the fact that nearly all of those respondents who disclosed that they had sexual contact with a client had told at least one other person, for example a manager, colleague, supervisor, therapist, friend, or partner. This might suggest that psy-professionals, employers, friends and partners, have been tempted to collude, and thus silently condone the sexual exploitation of clients, rather than make a complaint against someone they know. It is suggested that in the face of such loud silence, the challenge for a client of service to come forward in this sort of situation could be intensified.

Even with the limitations of this type of this secondary reporting about research data, there remains an implication that therapeutic sexual exploitation is an issue of concern for psy-professionals in both the United States and Great Britain. It should dispel the myths that such behaviour belongs to the lunatic fringe, commune hippies or the days of encounter groups. It might also draw attention to the value of looking at this ethical issue from a systemic angle rather than solely from the point of view of the occasional errant professional. How has the system of peers, colleagues, trainers, business partners, dealt with therapeutic sexual exploitation? It raises the question whether instances of sexual exploitation within therapeutic environments has been continually framed as some sort of therapeutic learning experience for all those concerned, despite ethical standards suggesting the contrary.

Data Gained from Complaint Processes and Independent Agencies

The second possible avenue for gaining statistical information of the incidences of sexual exploitation in therapeutic environments has been from complaint bodies and independent agencies. Syme (2003) noted that agencies receive more calls about sexual misconduct complaints than they do formal complaints laid. She thought that this was

influenced by the fact that “complaints procedures are complicated and difficult to follow for someone with low self esteem and lacking confidence” (Syme, Ibid, p. 14). Interestingly, clients of service attempting to make complaints have not cited their own personal weaknesses as a reason for their often unsatisfactory experience of complaint processes (Russell, 1993). Nonetheless, even with clients of service stating their reluctance to make a formal complaint in such situations, many have still preserved. An array of statistical data is provided by Syme (2003, p. 15): In the 12 months prior to March 2001, the British Association of Counselling and Psychotherapy had received 60 complaints of which 8.5% involved inappropriate sexual contact with a client; half of the complaints received from the British Psychological Society in 1999 which related to conduct matters were connected to sexual exploitation. POPAN (Prevention of Professional Abuse Network) in the year 1999 – 2000 recounted that 38% of all complaints made were against psy-professionals. Out of that 38% of complaints made against psy-professionals, 28% related to sexual abuse from a psy-professional towards a client. The United Kingdom of Psychotherapy publishes annual complaints statistics but there was no breakdown by nature of complaint so it could not be analysed (Syme, 2003, p. 15).

More recent figures from the United States, provided by Wheeler and Bertram (2008), have suggested that the issues of sexually exploitative relationships in therapeutic environments are still of a significant concern. They took a sampling of representative data from across several states and found that “mismanaged relationships” between client and counsellor including sexual misconduct cases, comprised up to 25 to 50% of all complaints received. Furthermore,

In the 30 years that American Counselling Association Insurance Trust has been tracking claims against counsellors, allegations of sexual activity involving counsellors and their clients, or the spouse of a client, continue to create the largest claim costs in the professional liability insurance program.... In one study of cases ... 35% of the claims involved allegations of sexual advances by the counsellor or inappropriate touching of clients (Wheeler and Bertram, 2008, p. 107).

This rise in complaints of this nature is addressed by Corey, Corey & Callanan (2007, p. 296) when they made brief reference to ‘the scope of the problem’.

The report of the American Psychological Association (2003b) Ethics Committee reveals that the major area of sexual dual relationship allegations continues to be male psychologists with adult female clients. Sexual

misconduct played a role in 53% of the complaints opened by the APA in 2002, and all of these sexual dual relationships involved male psychologist-female client complaints.

While it would be unwise to assume that female psy-practitioners are incapable of sexually abusing clients, and male clients are never sexually exploited – this data, at least for now, could be interpreted to suggest that it is primarily women who are being sexually exploited in therapeutic environments.

What such statistics reveal for the United States and Great Britain is that there is still an issue of sexual exploitation within therapeutic environments. Such statistics also reveal a change in discourse. At some point during history therapeutic practitioners started to capture the extent and impact of this particular professional problem. It was now considered an issue worthy to capture data about. What remain elusive are the conditions of possibility which led to such a change.

Researching the Material Effects of Therapeutic Sexual Exploitation

While the reasons for such change are not apparent at this point, another change can be noted around this time. In referring to an often cited research project that Bouhoutos et al conducted in 1983, Corey, Corey and Callanan (2007) reported that out of the 559 clients that had sexual relations with their therapist, subsequent therapists who were treating these clients reported that 90% of such clients were adversely affected. Some of the signs of despair experienced by clients included mistrusting people, severe depression, hospitalisation and in some cases suicide. When a following study was conducted by Second et al in 1985, of the therapeutic practitioners who had reported that 10% clients reported no undue harm as a result of therapeutic sexual relations, it was discovered that those therapeutic practitioners had themselves engaged in sexual relations with clients of service (as cited in Pope, 1988).

Durrie, 1980 (as cited in Pope, 1988, p. 224) conducted an original study of female clients who had been sexually exploited by their therapists and found that there were:

Many instances of suicide attempts, severe depression (some lasting months), mental hospitalizations, shock treatment, and separations and divorces from husbands ... Women reported being fired from or having to leave their jobs because of pressure and ineffectual working habits, because of their depression, crying spells, anger and anxiety.

Therefore, it was as early as 1980, that overseas research was being conducted suggesting that clients – and family relationships – could be adversely effected after therapeutic sexual exploitation, and at times with devastating, permanent consequences. These findings also support the claims made in chapter three, that clients who have been sexually exploited in therapeutic environments may subsequently find themselves in increased states of despair, which can result in hospitalisation and receiving ‘treatment’, against their consent, for their so called internalised-medical mental health disorder.

Pope (1998) suggested, after primary research, that the effects of therapist-client sexual relations seemed to be very similar to the effects experienced due to other forms of sexual exploitation, particularly incest and rape. Clients, at the time, or some time later, displayed symptoms that could be classified under what is now commonly termed post-traumatic stress disorder. He thought there are ten aspects commonly associated with client-therapist sex: ambivalence, guilt, emptiness and loneliness, sexual confusion, impaired ability to trust, identity and boundary confusion, emotional lability, suppressed rage, increased suicide risk and cognitive dysfunction.

Not all of the above features will be explored in detail; however, the following points will be made. It was not uncommon to find, Pope (1988) reported, that clients felt ambivalent about their trusted therapeutic practitioner, as incest victims feel ambivalent towards their trusted family member. Clients of service had mixed feelings of knowing what was done to them was a breach of trust and caused them harm, yet at the same time they reported feeling a sense of loyalty, and then a fear of loss or rejection if they dared to speak publically on the matter. Some clients of service reported that, in their devastation, they returned to patterns of self-destructive behaviour because of their intensified feelings of shame, worthlessness and guilt. Some reported immense feelings of rage, but felt that the therapeutic practitioner concerned would not welcome hearing it (Pope, 1988).

Russell (1993) interviewed 40 clients of service who had been sexually exploited by their therapeutic practitioner. She categorised the material effects, the impact of the exploitative relationship upon clients of service, in a slightly different way from Pope (1998). She noted prior to the sexual exploitation, a number of clients reported feeling special to the therapeutic practitioner and that there was a level of dependency upon the therapeutic practitioner which correspondingly led to a sense of disempowerment for those clients of service. Many clients of service reported placing high levels of trust in the therapeutic relationship as a means for making them well or whole. Some clients of service talked of feeling helpless and frustrated at not being able to warn others of the dangers of

that particular therapeutic practitioner. There were also some commonalities with Pope's (1988) research. With Russell's research she also found that clients of service talked about their feelings of rage, ambivalence, guilt, isolation, poor self-image and their self-destructive behaviours as a result of blaming themselves for the practitioner's breach of trust.

Clients of service who experience therapeutic sexual exploitation, it seems, can experience high degrees of emotional distress affecting many aspects of daily life. As Pope (1988, p. 223) stated, which I will argue in later chapters, might still be relevant for the New Zealand setting, is that:

perhaps one of the greatest problems is the fact that most mental health professionals are unaware – in any specific and emotionally immediate way – of the damage that therapist-client sexual intimacy causes the client. Counselors may be aware that they are violating ethical... standards ... when they engage with sex with their clients. But they tend to be unaware of the devastating ways in which they are violating the client's welfare, trust, sense of identity, and potential for future development.

Highlighting the material affects for clients of therapeutic scientific exploitation in scientific texts is a valuable and useful exercise; however, it could be argued the full impact of those material effects, become somewhat removed through the conventions of academic discourse. Nevertheless, from the time of Freud to the 1990s, Western scientific therapeutic discourse had moved, at least in the case of Great Britain and the United States. It had become more 'sayable' to talk about the extent of therapeutic exploitation and more 'sayable' to discuss the devastating impact this can have for many clients of service. It had moved, at least in part, away from locating the client's distress as being indicative of the client's internal problem and had re-located the client's distressed state as the effect of the therapeutic practitioner's unethical, sexually exploitative behaviour. More importantly, perhaps, there was an interest by some to connect current therapeutic sexual exploitation to historical and institutional psy-practices.

Section Three: The changing tide – the scientific knowledge twenty years later

Moving forward approximately thirty years, one can see another significant change in the overseas scientific discourse in this area. What immediately follows is an account of two contemporary Codes of Ethics, one from the United States and one from Great Britain, and their ethical standards around sexual relationships in therapeutic environments. After

describing these two documents a discussion will follow. However, what can be immediately seen is the increased codification of what sort of therapeutic relationship and what sort of sexual behaviour is now considered harmful for clients of service. This will be a useful comparison when looking to New Zealand's Codes of Ethics on the topic of therapeutic sexual exploitation.

The American Counseling Association's Code of Ethics (2005, p. 5) under section A.5.a states that "sexual or romantic counsellor-client interactions or relationships with current clients, their romantic partners or their family members are prohibited." Under section F.10.b. "sexual or romantic interactions or relationships with current students are prohibited" (p. 16). Finally, under F.3.b "sexual or romantic interactions or relationships with current supervisees are prohibited" (American Counseling Association, Code of Ethics, 2010, p. 14).

Therefore, when looking at this recent Codes of Ethics three things can be noted. Firstly, sexually unethical, inappropriate and harmful behaviour now includes both sexual *and romantic* behaviour of the therapeutic practitioner. Secondly, ethical standards have been extended to other therapeutic environments such as training and supervision. The third significant change is that it is now considered unethical for a therapeutic practitioner to have a sexual or romantic relationship with a client's partner or their family member. One might consider whether such an increase in codification arose, not out of theoretical possibilities or scientific advancement, but in response to issues brought to the attention of ethical bodies.

The final significant change appeared in section A.5.b of the ACA Code of Ethics. It is long and detailed but it is included here to illustrate the extent in which one professional therapeutic association has created new scientific knowledge about ethical standards of professional practice:

Sexual or romantic counselor-client interactions or relationships with former clients, their romantic partners, or their family members are prohibited for a period of 5 years following the last professional contact. Counsellors, before engaging in sexual or romantic interactions or relationships with clients, their romantic partners, or client family members after 5 years following the last professional contact, demonstrate forethought and document (in written form) whether the interactions or relationships can be viewed as exploitative in some way and/or whether there is still potential harm to the former client; in cases of

potential exploitation and/or harm, the counsellor avoids entering such an interaction or relationship.

ACA, by 2005, thought it prudent to codify for its members and the public that it is harmful for clients of therapy to have a sexual or romantic relationship with one's client even after the therapeutic relationship had ended, at least for a period of five years. Even after the five year period, it is incumbent upon the therapeutic professional to carefully consider the needs of his or her ex-client.

The British Association of Counselling and Psychotherapy's Code of Ethics (2010), like the current ACA Code, expressly and specifically prohibit all sexual behaviours *or activities* between a practitioner and a client:

Practitioners must not abuse their client's trust in order to gain sexual, emotional, financial or any other kind of personal advantage. Sexual relations with clients are prohibited. 'Sexual relations' include intercourse, any other type of sexual activity or sexualised behaviour. Practitioners should think carefully about, and exercise considerable caution before, entering into personal or business relationships with former clients and should expect to be professionally accountable if the relationship becomes detrimental to the client or the standing of the profession (BACP, Code of Ethics, 2101, p. 7).

Under this Code, the generic term of practitioner is used to apply to anyone with the responsibility for the provision of counselling or psychotherapy-related services – which includes the role of trainer and supervisor. The term client is also used as a generic term to refer to any individual or social unit who is the recipient of these services (BACP, Code of Ethics, 2010, p. 2). These two overseas contemporary Code of Ethics will be compared to four contemporary New Zealand based Codes of Codes in the following chapter, to see what may be similar or different to New Zealand's discursive formation on therapeutic sexual exploitation.

How have overseas therapeutic experts made sense of this increased codification about professionally ethical sexual behaviour? Shillito-Clarke (2000) did not explain what drove such changes to the BACP Code of Ethics. She does discuss why seemingly consenting adults, that is trainees and supervisees, who are not clients in the traditional sense, have been offered codified protection. In her opinion, trainees and supervisees can still be emotionally vulnerable in these roles and subject to real or perceived power issues from trainers and supervisors. Syme (2003) noted that there had been little research into the extent which trainers have sexually exploited their trainees. However, on the little local

research that had been done, she suggested that trainees who had sexual relations with their trainers were more likely to sexually exploit their clients. Syme (2003, p. 26) did not directly mention supervisor/supervisee relationships but in her concluding paragraph in the chapter of sexual relationships in therapy she noted: "... senior members of the profession who sexually abuse their trainees, supervisees and clients must be brought to book and their rights to practise removed."

Pope and Vasquez (1998) discussed the ethical responsibilities of supervisors/trainers. They referred to one research piece which found that one in four women who had received their doctorate in psychology within the past six years had engaged in sexual intimacies with at least one of her psychology educators. They make two points. It is supervisors that bear the responsibility for ensuring such intimacies do not occur and any such matters are dealt with frankly yet sensitively within the therapeutic setting. The second point they made is that educators must display the same integrity regarding sexual attraction that they expect their students to emulate. It could be argued that educating trainees about appropriate sexual boundaries in therapeutic environments cannot just be taught as a theory; it also needs to be taught by example.

The principle of discontinuity might question whether on-going extensions and codifications about ethical sexual behaviour for therapeutic practitioners, appear as a continuation of progress, a refinement, in ethical thinking and professional practice. It questions whether ethical standards in this regard are still anchored in foundationalist assumptions. It asks whether a 'unity of ideas' as expressed in Codes of Ethics, about power and vulnerability in therapeutic environments, is in fact masking a series of events. In essence, have Codes of Ethics been used to mask the degree in which sexualised or romanticised relationships *have been* occurring in what has been termed therapeutic environments? It also asks under what conditions has change in discourse occurred. The following section suggests one condition of possibility for why such changes might have occurred – through a change in power relations between clients of service and therapeutic practitioners.

Section Four: The Extra-Discursive: Giving Change a Content

In looking for conditions of possibility for why such changes might have occurred over time, I would suggest one might be the political mobilization of clients of service who have experienced therapeutic sexual exploitation. However, this history of struggle does not appear to feature readily in scientific texts on therapeutic sexual exploitation, in texts

on ethical practice in general. As mentioned previously, most scientific literature on the topic of therapeutic sexual exploitation has been constructed and presented primarily from practitioners' points of view, and will conform to academic conventions. The vast majority of research within this area appears to be owned by practitioners and supplied for the benefit of practitioners. This section, therefore, attempts to include the extra-discursive, the discourse that is not so immediately visible in scientific literature, but it is understood and known through experience. It is a case study on an organisation based in the United States called TELL: Therapy Exploitation Link Line (Therapy Exploitation Link Line; n.d)

The purpose and background to TELL

TELL's mission statement is on the home page of their website. Its purpose is:
 ... to help victims and survivors of exploitation by psychotherapists and other health care providers find the support and resources they will need to understand what has happened to them, take action, and heal (Therapy Exploitation Link Line, n.d)

Its political nature is explicit. Its purpose is to support clients to heal, and to expose and stop exploitation of clients of service by psy-professionals. Equally it is clear that it does not offer therapy. It does offer resources, referral lists and networking opportunities via the internet for people who have been exploited through therapy. The discourse that appears within this website is different from that which appears in academic texts. Its focus of concern is primarily on clients of service and their families, not on therapeutic practitioners. This form of knowledge creation, production and distribution is predominately owed by and for the benefit of clients of service.

Its origins are interesting. TELL was first established in 1989 after the Boston Globe publicized the issue of therapy exploitation. As a result a group of five women met to support each other since they all shared the same experience of being sexually exploited within therapy. Within months, through word of mouth and additional publicity, numbers at monthly meetings reached 40 or 50. Within a short period of time TELL representatives were giving press conferences, on national television shows giving commentary about victim/survivor experiences, guest speakers to medical and law students. In 1992 the American Psychiatric Association awarded TELL its Assembly Speakers Award for its work. By 1997 TELL stopped having monthly meetings and became an international cyberspace organisation. Such ground-up political action is a clear example of resistance to power, which starts with the everyday. Representatives of TELL work in different political

ways. Some sponsor bills and testify at public hearings or help draft clients' bill of rights. Some offer support through responding to email callers or updating information and resources web-pages. Regardless of action, there is a determination from clients to service to unite and speak what has been the 'unspeakable' (Therapy Exploitation Link Line, n.d).

A place to speak the unspeakable

TELLS's website offers a topics page. Within this there are 17 stories from people who have been emotionally or sexually abused from psy-professionals – including third parties such as family members. None of these stories constitute scientific discourse on the topic of ethical standards for psy-professionals. However, I would argue that this discourse is in fact part of a process which is doing just that. This is the extra-discursive. Such discourse lies outside the formal discourse and it has power, not in an institutional sense, but in the sense that it unites those that would otherwise be isolated. It shows strength, resistance and a determination not to be silenced. Such silence has been creatively challenged, even when as part of a legal document the distressed client 'agrees' never to speak publically again and upon ill-advice, mistakenly forfeits being able to tell her or his story. In TELL's space, she can speak:

I cannot tell you that I was sexually and emotionally exploited, abused, and finally abandoned by the therapist I saw for almost six years. I signed a gag order. If I were to tell you such things, the abuser could sue me: I could lose my home. So I need to make clear that I am absolutely not saying that these things ever happened to me....

Gag Order Vows

Because I am tired

Because I have given years of my life to an exploitive and abusive relationship

Because I am being told that this is what I am expected to do

Because I am being told that this is standard and expected

I, (victim's name here)

Do solemnly swear

That from now until the day I die

Sick or well

Rich or poor

Content or suicidal
 To uphold my silence
 To not tell the truth
 To deny my own history
 And, if need be, lie
 The therapist who abused me
 May continue to practice his profession
 And be free to abuse again
 Without fear of interference of any kind from me.
 I make this pledge in exchange for
 \$ (fill in amount here.)
 Anonymous (Therapy Exploitation Link Line, n.d.)

The idea that legal powers can, in effect, prohibit a client's voice will also be explored in chapter eight when looking at the impact Accident Compensation Corporation legislation has had upon New Zealand's discursive framework regarding therapeutic sexual exploitation.

Information sharing

Other pages available on the TELL website lists resources, scholarly papers and books related to exploitation, including sexual exploitation, within therapeutic environments. The range of texts is extensive and while not all relate specifically to sexually exploitation, many do. It is unlikely that all texts are written by people who have been sexually exploited by a therapeutic practitioner. Nonetheless, these papers might be of interest to clients of service. For example, one paper addresses the warning signs to be alert for when assessing whether one's therapist has starting eroding the professional boundary (Disch, n.d.). It provides a comprehensive list of the types of behaviours that indicate a blurring of professional boundaries. If a therapeutic practitioner attempts to create a sense of family or specialness it is one possible indicator that sexual exploitation is more likely to occur. This sort of information could be of interest to potential clients of service. It could be argued that this might be useful information that new clients of service should be given.

Similarly, absent in most academic texts, as mentioned earlier, is the history of sexual misconduct by psy-professions. Schoener (n.d.) recounted the history where it has been predominately women who have been sexually exploited in therapeutic environments and then subsequently blamed for seducing the male therapist:

In a letter to Freud dated 4 June 1909, Jung mentions the relationship and indicates that Spielrein was "systematically planning [his] seduction." (McGuire, 1988, p.228) Freud's response, dated 7 June 1909, was supportive and noted that while Freud himself had "never been taken in quite so badly," he had "...come very close to it a number of times and had a narrow escape." (McGuire, 1988, p.230) Freud focused all blame on Spielrein: "*The way these women manage to charm us with every conceivable psychic perfection until they have attained their purpose is one of nature's greatest spectacles*" (original italics, McGuire, 1988, p.231 as cited in Schoener, n.d.).

Schoener (n.d.) argued that ethical codes have not altered the prevalence of female sexual exploitation over the last few centuries and suggests it is time for a new approach to be adopted. Again, such a discourse is not likely to feature in academic texts, but historical, institutional trends may become of increasing interest to previously isolated clients of service who have experienced therapeutic sexual exploitation.

The value of sharing experience – without paying for treatment

Personal stories can also be shared on this website. They can offer hope to those who have been emotionally distressed due to therapeutic sexual exploitation and who otherwise might be alone or be 'treated' in isolation from others:

I thought I was the only one. I was 28, had four children and a marriage that was not working. Severe depression led to hospitalization and subsequent sexual abuse, during regular office visits, by my psychiatrist. There was no way I could escape. I trusted Dr. G when he told me: "affairs are good for marriages." I thought I was "special" to him and the "only one." I did not realize, 30 years ago, how depressed I was and how that made me vulnerable to being abused by someone I trusted with every part of my soul (Nowak, n.d.).

Personal stories, in the public domain, can be a legitimate way of a client expressing their anger at being treated by therapeutic institutions as being mentally disordered when, in fact, a client of service was emotionally distressed due to being harmed through a breach in professional standards by a therapeutic practitioner. It is a place in which clients of service can be supported to speak:

From the mental health community, we want recognition that patient-therapist sex happens, that when it does it is harmful, that it is never "okay," and that it is always the responsibility of the therapist. We want cessation of attempts to

closely categorize victims with such terms as “borderline,” and a recognition that such categorization does little more than blame the victim. We would like you to recognize, as we do, that patient-therapist sex is never really going to go away, and that by sticking our heads in the sand, we are only becoming less dignified and more obvious targets (Wohlberg, n.d.).

Personal stories, while less common at this point, have also included the voices of family members:

Shortly after she told me of that last session, in my heart I blamed her. Then later, I blamed myself for not doing anything when I had the chance. But now I have come to realize that it is this therapist who should bear full responsibility. When she was particularly vulnerable and hurting, he groomed and took advantage of her, his client, my precious wife. In doing so, he took advantage of me. I had trusted him with the care of my wife, to faithfully act and perform his vocation in an ethical and “professional” manner. Instead, he betrayed her. And I have been betrayed by him as well (Flores, n.d.)

This is one aspect of the content behind change that is not so apparent in scientific texts on ethical standards of practice on therapeutic sexual relations. Codes of Ethics, and scientific texts, do not seem to capture the struggle, historically and currently, for clients of service, and families, to challenge the existing power relations inherent in Western institutions of counselling and psychotherapy. To do so, would require an explicit appreciation of established norms of silence and professional rationalizations about sexually abusive therapeutic practices.

To conclude this chapter, it would be timely to return to Foucault. However, instead, this chapter will conclude with the words of Wohlberg (n.d.), who is a responder from TELL. It seems to me she has captured the sentiments of Foucault when she said:

I have come into personal and often quite intense contact with more than a thousand people who, over the course of our relationship, have become determined to say things that “people don’t want to hear....” And yes, almost all have been ignored, refuted, and vilified by those to whom our society has ascribed power and authority and by those who find it intolerable to interfere with the prevailing power structure.

I suspect that Wohlberg (n.d.), and others like her, will have implicit knowledge which will be less likely to be found in scientific therapeutic texts. That is a content, a condition of possibility, behind the ‘empty’ concept of change, behind more scientific accounts on

ethical standards around therapeutic sexual exploitation. The significance of this overseas discourse to New Zealand's discursive formation will be explained in the following chapters.

Chapter Five: Controlling the Discourse in New Zealand

The ‘Unsayable’ About Therapeutic Sexual Exploitation

Introduction

Foucault said:

...in every society the production of discourse is at once controlled, selected, organised and redistributed according to a certain number of procedures, whose role it is to avert its powers and dangers, to cope with chance events, to evade its ponderous, awesome, materiality (Foucault, cited in Hook, 2007 p. 101).

This chapter, in conjunction with the following chapter, will be examining the production of New Zealand’s scientific discourse on therapeutic sexual exploitation, as it has been selected, organised and redistributed. It will be asking if New Zealand’s scientific discourse on therapeutic sexual exploitation has been obscuring the material effects of power and practice in this field. Given the preceding chapter’s analysis on overseas discourses, this chapter will be comparing New Zealand’s scientific discourse on therapeutic exploitation with those discourses from the United States and Great Britain. This will highlight some of the conditions of possibility which have influenced a more localised, as well as more a globalised, discursive formation on therapeutic sexual exploitation.

Chapters five and six, when read together, might be viewed as a New Zealand based literature review on therapeutic sexual exploitation. Yet, behind this literature review are Foucault’s methodological principles of reversal and discontinuity. By undertaking an effective history of New Zealand’s scientific discourse on therapeutic sexual exploitation two things will be shown. When trying to locate an origin for local scientific thought around therapeutic sexual exploitation in a New Zealand context, one can see there does not appear to be one. This raises questions. On what basis have ethical standards about sexualised therapeutic behaviour been created and applied within New Zealand therapeutic Codes of Conduct? Through the course of this analysis anomalies between New Zealand’s discourse on therapeutic sexual exploitation and overseas discourses on such matters will be discussed.

To undertake this historical review this chapter will focus particularly on New Zealand scientific research and academic commentary on therapeutic sexual exploitation. This chapter is divided into three sections. The first section will explore the general trends in counselling research and practice as it relates to the New Zealand experience. It will discuss how these general trends might be one condition of possibility that has influenced

New Zealand's discursive formation on therapeutic sexual exploitation. The following two sections will explore New Zealand based academic literature on therapeutic sexual exploitation in the separate disciplines of counselling and psychotherapy. It is from within these two sections that it will be revealed that there appears to have been an absence of scientific research and debate in New Zealand about therapeutic sexual exploitation. However, in this apparent absence, New Zealand *will still have* its own history and discourse on therapeutic sexual exploitation. It may just be obscured. Therefore, the fourth section will explore New Zealand based psychiatric scientific material that has discussed the issue of therapeutic sexual exploitation occurring within its own professional disciplines. The inclusion of this material is relevant because psychiatry is a branch within the psy-profession where psychotherapy is part of training and treatment. Similarly, the following chapter is also part of the more ambiguous New Zealand scientific discourse on therapeutic sexual exploitation. Its focus will be on examining historical and current New Zealand based Codes of Ethics and the particular developments around codifications to do with sexual relations within therapeutic environments.

However, in studying historical texts, Foucault reminded his readers, that while textual analysis is necessary, it is not the text one is really studying:

You do not study the texts which you take as raw material according to their grammatical structure: you do not describe the semantic field which they cover: it is not language which is your object... [it is] the set of rules which at a given period and for a given society define the limits and forms of the *sayable*. What is it possible to speak of? What is the constituted domain of discourse? (Foucault, 1968/1991a, p. 59).

These chapters, respectively, are exploring the rules as to what has been 'sayable' and 'unsayable' in New Zealand's scientific domain on therapeutic sexual exploitation.

An effective history - New Zealand's scientific knowledge on therapeutic sexual exploitation

The connection between counselling research and counselling practice

In attempting to re-trace New Zealand's scientific discourse on therapeutic sexual exploitation one thing became noticeable. The database searches revealed that New Zealand based psychotherapy and counselling disciplines were dedicated towards 'therapatising' those who had either been sexually exploited or 'therapasiting' those who had sexually exploited. According to Manthei (1991, 2001) this new specialist field of

counselling emerged in New Zealand in the late 1980s as a response to the publicity around childhood sexual abuse in families, institutions and communities; so much so, that this new growth industry provided a special issue in the 1998 *New Zealand Journal of Counselling*. This issue was dedicated to assist those working in the field of sexual abuse. At this point it appeared that it was ‘sayable’ for the expert therapeutic disciplines to discuss survivors and perpetrators of sexual abuse when they located themselves as expert therapeutic practitioners.

However, the issue of sexual exploitation occurring within the metaphorical family of therapeutic practice has not been so widely discussed by the therapeutic professions in New Zealand. The findings of this historical literature search suggest it has been less ‘sayable’ in New Zealand to discuss survivors and perpetrators when the sexual abuse has occurred within the professional and contractual therapeutic relationship. Locating a possible origin for when these two local therapeutic disciplines began discussing therapeutic sexual exploitation proved difficult. The academic literature search, it seems that therapeutic sexual exploitation has not been publically discussed or researched in New Zealand but rather, as the following chapter will show, this ethical issue seems to have just appeared in various therapeutic Codes of Ethics.

In referring specifically to the counselling discipline in New Zealand the only regular academic and local journal has been the *New Zealand Journal of Counselling*. It has been suggested, after undertaking a quantitative investigation that spanned two decades that New Zealand counsellors generally have not appeared to undertake nor engage critically with research investigations or findings (Bunce, 1992; Manthei 1991, 2001, 2004, 1991). Manthei (2006, p. 59) studied the patterns of counselling research. As a result of this study he suggested that most New Zealand counsellors neither read research nor conduct it. While offering various reasons for why this might be so, he concluded that there was a real “need for more local research that (i) investigates local issues, (ii) uses local subjects, and (iii) is situated in local settings.” An apparent lack of local research around the nature and extent of therapeutic sexual exploitation may sit within a broader concern that there is a disconnection between current therapeutic practice and any reliance on research material. Furthermore, Manthei (2006) noted that there was a lack of client voice in counselling research. The majority of counselling research had been conducted from the perspective of the counsellor, or by using solely quantitative methods, observing and measuring clients’ or counsellors’ actions. This, he suggested, did not provide an adequate picture of the inner

knowledges of clients and nor did it allow for them to control the meanings of their own experiences.

This finding would seem to support Kaye's (1995, p. 30) opinion that since its inception psychotherapy (and one might also suggest counselling) has "been underpinned by conceptualisations of both practice and research predominately modernist in nature whereby there is a recursive relationship between the two discourses such that each informs other." In other words, these disciplines, through their practices, have held the domain on who is able to speak and who is able to be studied, which has had the effect of maintaining and strengthening the status-quo within the knowledge-power relationship.

This apparent lack of local research data in the area therapeutic sexual exploitation, at least for counsellors in New Zealand, sits within, what some might argue, a wider concern that there is limited professional engagement with research. Manthei (2004) noted that since its inception in 1975, editors of the *New Zealand Journal of Counselling* had constantly struggled to find publishable material for their annual journal. On average, only 33% of all articles listed between 1975 and 2000 referred to original data. This, one would think, might have implications for how, at a national level, counselling associations, counselling training providers and ethical boards inform and develop their practice – all of which can materially affect the lives of local clients, families and communities who have been affected by therapeutic sexual exploitation.

This concern is also shared by some within the discipline of psychotherapy. Thomas (2005), the then acting New Zealand Health and Disability Commissioner, in supporting the then claims for psychotherapy to become a registered profession, quoted Professor Clarkson: "psychotherapy hurts more and more often when professional organisations do not take research evidence and ethics and complaints seriously." This may well prompt the question as to whether there are adequate processes and procedures for ensuring that practising therapeutic practitioners are kept informed of relevant professional development issues.

In examining the content analysis of *The New Zealand Journal of Counselling* created by Manthei and Miller (2001, 1991) as well as looking at more recent copies that covered the last ten years, no articles were cited specifically on or about therapeutic sexual exploitation occurring in New Zealand. Equally, when undertaking bibliographies on New Zealand based counselling, therapeutic and guidance literature Manthei and Miller (2001, 1991) made no mention on the ethical issues of sexual relations in therapeutic environments. Another possible source for such debate and research might have appeared

in the New Zealand Association of Counsellor's newsletter but this document is not in the public domain. However, Miller's (1996) analysis of its contents is in the public arena, and this suggested that between 1974 and 1996 the issue of therapeutic sexual exploitation was not discussed during this forum either, at least during this period.

This noticeable lack in local research material on therapeutic sexual exploitation, in 2010, is one difference between New Zealand's scientific discourse on the matter and those from United States and Great Britain. It must be remembered, however, silence on a topic within a scientific domain is not necessarily an indication that no issue exists. A lack of detail and depth around local patterns and the material effects of therapeutic sexual exploitation, it will be remembered, has not been uncommon. This was also the experience of Russell (1993) and Rutter (1989) in their respective localised studies on therapeutic sexual exploitation.

Section One: New Zealand counselling: the 'unsayable' about therapeutic sexual exploitation

However, as part of investigating the New Zealand based literature, three scientific articles were located which made reference to therapeutic sexual exploitation as well as having some sort of link to New Zealand. Winslade and White (2002) undertook an analysis of ethical complaints received by the New Zealand Association of Counsellors between 1991 and 2000 and published their findings in the *New Zealand Journal of Counselling*. This is perhaps the first and only New Zealand based academic reference to sexual exploitation by New Zealand counsellors. While this article will be discussed in more depth in chapter eight, the authors noted that one of the most common type of complaints received was to do with sexual behaviours of counsellors. They also noted that about one fifth of all complaints ended up being addressed through either a hearing or mediation; correspondingly then, four fifths of complaints did not get addressed in this manner (Winslade & White, 2002).

Two articles written by New Zealand based counselling academics on this topic were found, but these articles were published in *The British Journal of Counselling* (Hermansson, 1997 and Webb, 1997). Hermansson's (1997) focus was not specifically on therapeutic sexual exploitation or the New Zealand situation. What he did suggest was that the increasing debate around boundary issues within counselling was driven by sexual exploitation concerns so 'treatment boundaries have become accentuated, and a concern for risk management and control has driven much of the thinking' (Hermansson, 1977, p. 2).

Hermansson proposed that there is in fact a need to ensure boundaries do not come excessively rigid nor excessively tight for both will bring therapeutic dysfunctionality. This is one condition of possibility that may have driven the creation and codification of ethical standards in this area: risk management and control for therapeutic practitioners. Framed in this way, it could be argued that respecting or caring for the client and their family's wellbeing has not necessarily been the primary motivator for developing ethical standards about sexual relations occurring in therapeutic environments.

Webb's article (1997) was more closely linked to discussing therapeutic sexual exploitation with particular reference to how boundary management issues have been dealt with, or more pointedly have not been dealt with, in counselling-training programmes. Webb (1997, p. 1) stated,

Limited attention has been given to the role that training can play in reducing professional boundary mismanagement and violation by counsellors. This has been the case even with regard to what is arguably the most serious form of boundary mismanagement, that of sexual exploitation.

Webb argued that most counsellors will face professional boundary dilemmas at some point within their professional lives. Therefore, she made the case that there is a need for this topic to be researched more fully, not only in cases where there have been boundary violations but also where potential boundary violations were avoided. Yet, this article did not include any New Zealand statistics on this matter and nor did it focus specifically on the New Zealand situation. As a result it remains unclear as to how counselling training programmes in New Zealand have been addressing and framing the ethical issue of sexual exploitation within professional practice. Given that there has remained a lack of local research in this area, the concern Webb raised in 1997 may still be relevant in 2010.

Webb (1997, p. 6) also drew attention for the need for trainers to model good boundary management, noting other American research conducted by Pope et al which indicated alarming rates of sexual contact between trainers and trainees. Without any local research data on this topic it is impossible to say whether such disturbing trends might exist in New Zealand. What can be said with more confidence is that if the profession does not wish to name or research this topic, let alone refer to it in a New Zealand context, it is going to be more difficult to ascertain whether startling rates exist here or not.

If there are alarming rates of sexual contact between trainers and trainees in New Zealand that might be one condition of possibility as to why it is not so readily addressed in training environments. It might be professionally awkward to teach ethical standards about

sexual behaviour to students if a member of one's own department, or the actual trainer, has had a history, or is currently, sexually exploiting his or her students. A second condition of possibility for why there may be a reluctance to teach ethical standards might be because of the material impact it may have for clients and trainees. It may provide clients of service with the discourse and the impetus to lay formal complaints against therapeutic practitioners for sexual exploitation. This, in turn, may have material effects for individual practitioners, their professional standing and their personal relationships - and for therapeutic organisations as a whole.

This gap in New Zealand commentary could mirror one of Russell's (1993) myths she identified from her local research into therapeutic sexual exploitation. If therapeutic sexual exploitation is not spoken about, let alone researched by the profession, it perhaps is understandable that some might draw the conclusion that this is not a problem 'here', in New Zealand; it happens 'over there', in the United States and Great Britain. However, as the previous chapter clearly illustrated, once sexual exploitation within therapeutic environments was named as such, local data were able to be collected which in turn revealed the extent and impact of the issue in therapeutic communities. The myth of 'not here, but elsewhere' was disproved. It appears that with the lack of New Zealand based counselling commentary and New Zealand based counselling research on therapeutic sexual exploitation it is difficult to state whether New Zealand might reveal similar statistics to those gained in United States and Great Britain. This is the value of taking a wider approach to the research question and looking at the extra discursive, to therapeutic discourses outside New Zealand. Anomalies can be noted. It highlights also how knowledge, including New Zealand knowledge, is controlled. It can be selected, organised and redistributed, including in the field of therapeutic sexual exploitation. As Foucault noted, discourse, what is included *and what is excluded*, are more than words present or absent on a page:

The mere fact of speaking, or employing words, or using the words of others... this fact is in itself a force. Discourse is, with respect to the relations of forces, not merely a surface of inscription, but something that brings about effects (as cited in Hook, 2007, p. 120).

Not researching the nature and extent of therapeutic sexual exploitation occurring within New Zealand brings about effects. One effect is that therapeutic sexual exploitation becomes 'unsayable' as a professional therapeutic issue - and that has material effects on the lives of clients of service and their families.

Section Two: New Zealand psychotherapy: the ‘unsayable’ about therapeutic sexual exploitation

Tracing the frequency and depth of comment about sexual relations within New Zealand psychotherapeutic practices has been more problematic. As discussed in chapter three, the main national association for psychotherapists has been the New Zealand Association for Psychotherapists, but unlike the New Zealand Association of Counsellors this association does not appear to have a regular journal that is publically available. Furthermore, an attempt was made to explore smaller New Zealand based psychotherapy associations. Gestalt Australia and New Zealand does have a journal and it is available on line, however, the four editions that are available on line had no articles dedicated to the issue of sexual relations occurring within therapeutic environments. A second therapeutic association, The Australian and New Zealand Psychodrama Association (ANZPA) has its own journal but it is not readily accessible and nor is it registered on the university database. Through the assistance of others, in particular an American psychiatrist and psychodramatist, Dr Adam Blatner, a request was lodged on an international psychodrama mailing list to see if anyone had written or read anything on sexual relations within therapeutic environments as it pertained to psychodrama. Even though it was an international mailing list, only one response was received. Ironically, the response came from a New Zealander who had conducted research on the broader issue of dual relationships as part fulfilment of his training requirements in psychodrama (Barton, 1999). Barton (1999) kindly gave his permission for his work to be used in this study.

Barton (1999) discussed the issue of dual relationships in psychodrama, from the point of view of being a practitioner and doctor working within in a small town within New Zealand. His study was primarily around non-sexual dual relationships. For the purposes of this dissertation, however, Barton (1999) noted that it was not uncommon for therapeutic practitioners, as group leaders, to be marriage/de-facto partners. He cited many examples of trainers of psychodrama who have been sexual partners, and suggested this is itself a dual relationship, for the trainers are not only sexual partners, but also partnered business associates. The following extract from his thesis is edited, deleting the itemised names of many romantic couples working together as business associates in psychodrama but it is presented to demonstrate his experience of the ‘unsayable’ about sexual dual relationships:

Psychodrama literature largely does not discuss the phenomenon of therapists/trainers as married couples. It is well known that Moreno married Zerka Toeman, the woman who became his primary co-worker. So far as I

have been able to ascertain, Moreno does not discuss the implications of this liaison on therapy... The point behind raising the names of the married and once married couples in the therapy/training world of US and Australasian psychodrama is to suggest that given the high incidence of the practice, it may be useful for there to be more literature on the benefits and pitfalls of carrying the personal into the professional, and vice versa. It is almost as if the area is either without interest, or for other reasons, not to be spoken of (Barton, 1999, p. 12).

Barton's comments are of interest in this study for three reasons. Firstly, he is a New Zealand psychotherapist raising the point that in his field, psychodrama, there is a high occurrence of sexual dual relationships: romantic/business partners, overseas and in New Zealand. This may well pose a dilemma. If a therapeutic practitioner had sexual relations with a client would the romantic partner, who is also a professional colleague, be obligated to report their partner's breach to the association's complaints committee? Would not reporting this breach of ethical standards represent a conflict of interest and thus jeopardise client safety?

Referring back to Webb's (1977) article, *if* there is an alarming rate of sexual contact between trainers and trainees in New Zealand, *as well as* a high rate of inter-marriage *between* some trainers, could this be a condition of possibility which might affect the under-reporting of this unethical behaviour, thus effectively masking the extent of such unethical practices within the profession? Would this mean that *both* therapeutic practitioners are acting in a way that puts their own personal interests before the safety interests of clients, families, communities?

Two other areas of interest in Barton's (1999) comments are connected. He identified that the romantic coupling of therapeutic business associates is not uncommon in psychodrama yet the implications for therapeutic practice are not well researched. But more importantly, to someone with an interest in Foucault's theoretical orientation, why has this question not been selected to research previously? How are relations of power played out for clients of service in this situation? How might they perceive conflict of interest issues, impartiality concerns and matters of natural justice being affected when personal, intimate or business connections are so entwined with the professional relationship? These concerns may be more pertinent if a client or student is considering making a complaint. If there is such an intertwining of relationships this may be a condition of possibility for the New Zealand situation, given that New Zealand is such a

geographically small country. It might be one possible reason affecting knowledge creation in the area of therapeutic sexual exploitation. Real or perceived, the profession's ability to act impartiality may be seen as an issue for concern by some clients of service and even by some therapeutic practitioners.

Connected to this lack of research, and most interestingly for this study, Barton (1999) had formed the opinion that such relationships are almost not to be spoken of, suggesting this may fall into the 'unsayable' category. It was shown in the previous chapter many early and eminent psychotherapists had sexual relations with clients. In the case of psychodrama, Moreno, the founder of psychodrama, began a relationship with Zerka Toeman when she was his trainee and he her mentor. That seems to be relatively well documented (Blatner, 2000). However, what has not been cited so readily was that Moreno was not only having a sexual relationship with his trainee, but he and the other trainee undertook this type of relationship while Moreno was married (Yalom, n.d.). I found no reference to partners when reading reports on other early eminent therapeutic practitioners who were reported as having sexual relations with their clients – nor reference to clients' partners. In fact, the impact upon partners and children still does not readily feature in the scientific discourse on therapeutic sexual exploitation

One condition of possibility for why Barton (1999) experienced dual relationships occurring with business/romantic partners as 'unsayable' might be because some of these business/romantic relationships emerged from confidential, therapeutic relationships - and perhaps some emerged behind the backs of spouses. If this was to be the case, this might cast doubt about a given professional's ability and integrity to provide a safe and respectful therapeutic environment for clients of service – and a safe and respectful environment for clients' families.

A third potential source of New Zealand based research data was the *Australian and New Zealand Journal of Family Therapy*. There were two articles that were found which mentioned sexual relations within therapeutic environments, however, they revealed little about the New Zealand experience. They have been included here, though, since this journal has a New Zealand based readership, and their commentary still forms part of New Zealand's discursive formation on therapeutic sexual exploitation.

In the first piece, Hill (2003) gave a personal account of his connections to his previous employer, the then well-respected psychiatrist and psychotherapist, Dr Christopher Allison. Allison was convicted in England in 2002 for repeatedly having sexual relations with his female patients. The title of Hill's article is called '*Citizen Above*

Suspicion’ and it tells not only of Allison’s unethical and criminal behaviour but also how various psy-complaint bodies were reluctant to investigate complaints laid against Allison. Sadly, their reluctance or negligence to follow up on complaints meant that Allison continued to sexually violate his female clients for another ten years after the initial complaint was made. It was not until a decade had past than Allison had his medical licence revoked and was prosecuted for criminal activity – and this, regrettably, had to be initiated by a client undertaking criminal proceedings (Hill, 2003).

The inability, reluctance, or negligence of national psy-complaint boards to properly investigate such claims is hard to imagine. What is revealing is that once criminal charges were laid and the court case was underway, a colleague psychiatrist of Allison’s was reported to have candidly said under cross examination, “Allison was a distinguished leader of his committee of psychiatrists – why should they have assumed there was substance in the claims?” (Hill, 2003, p. 109). This sort of discourse typifies Foucault’s point about power relations and their possible material effects. It also illustrates the concern expressed in chapter three. The voices of distressed clients of service are unlikely to be seen as equally valid when compared to the voices of rational therapeutic experts. Not all voices have equal institutional power. However, as Foucault said, it is useful to question:

Who is speaking? Who, among the totality of speaking individuals, is accorded the right to use this sort of language? Who is qualified to do so? Who derives from it his [sic] own special quality, his [sic] prestige, and from whom, in return, does he receive if not the assurance, at least the presumption, that what he [sic] says is true? (Foucault, 1969, 1972, p. 50).

In this instance it seems the psy-complaint authorities gave Dr Allison the presumption of that what he said was true. It seems the clients of service, in this instance, conversely, were presumed not to be speaking the truth. It also seems presumptions of truth can be used to circumvent due process in cases where complaints are laid about therapeutic sexual exploitation. Unfortunately, this is not limited to the English experience. New Zealand has its own history of ‘institutional presumptions’, which has more recently come to light. It was reported that it took ten years after initial complaints being laid with the New Zealand Police before Bert Potter of Centrepont was charged with sex-related crimes (Hume, 2009). This is the sort of political struggle that does not so readily get presented in social-scientific literature on ethical standards of therapeutic practice.

In the second reference, Johns (2006) reviewed a book about touch in therapeutic environments. He expressed a concern about touch being used in therapeutic environments

as a “client may interpret touch as having a sexual intent... This could inadvertently lead to an unwanted reciprocation or an investigation into the practitioner’s behaviour” (Johns, 2006, p. 119). The discourse, at least in this review, does not include the possibility that a client may have interpreted touch as having a sexual content and such interpretations, in some situations, have proven to be correct. This article also highlighted the professional concern about practitioners having to undergo investigation due to client allegations about sexual impropriety. What was not mentioned in this review was any concern for clients of service when therapeutic practitioners have abused their position of trust and used touch for their own emotional avoidance and/or sexual gratification.

The research undertaken thus far has suggested that there is minimal New Zealand based scientific discussion and research about sexual relationships in therapeutic environments. Therefore, if one accepts Manthei’s (2006) claim there is also a corresponding need to research sexual exploitation within New Zealand therapeutic environments, which would have to include the voice of local clients of service and their families.

Section Three: New Zealand psychiatry: the ‘unsayable’ about therapeutic sexual exploitation

Given the little available or locatable New Zealand data on sexual exploitation within both New Zealand counselling and psychotherapy journals, this research stepped outside its initial bounds and explored the *Australian and New Zealand Journal of Psychiatry*, since psychotherapy is also practised by many in psychiatry and is part of the psy-matrix. While no New Zealand based data was located on this topic, what was striking was that the issue of therapeutic sexual exploitation was more visible in this journal compared to the psy-related journals mentioned above. Much of the discussion, however, related to the Australian context (Adler, 1997; Clarke, 1999; Fitzgerald, 1999; Gabbard, 1997; Galletly, 1993; Pargiter, 1997; Quardrio, 1996).

Nonetheless, Quardrio’s article (1996) is interesting. She explained the findings of her qualitative research with 40 Australian women who had been sexually exploited by therapeutic practitioners which included but was not limited to, psychiatrists. She adopted a feminist perspective and noted the following:

Offenders are often senior, well trained and highly respected... Evidently, the problem is not one of a few deviant or fringe practitioners.... Gender inequity, sexual abuse and domestic violence are of major concern in contemporary

society... If we are to make a contribution to dealing with these social ills, we must look first to the organisation and the ethos of our own groups and the extent to which we mirror the problems of the macro-culture (Quardrio, 1996, p. 129).

Such comments are thought-provoking and a different methodological approach to researching therapeutic sexual exploitation may well reveal additional points of interest that relate to race, gender and class issues. What Quardrio (1996) does reinforce are the overseas findings that therapeutic sexual exploitation of clients of service is not limited to a lunatic fringe. Given that there appears to be no substantial New Zealand research on this topic, it is impossible to say to what degree offenders in New Zealand might also be senior, well- trained, and highly respected professionals. It is even possible that such senior, well trained and highly respected therapeutic professionals could sit on ethical-complaints committees. Furthermore, if New Zealand therapeutic practitioners are interested in making a contribution to the social ills of society, Quardrio (1996) is challenging them to ‘look first to their own organisations and to the ethos of their own groups and the extent to which they mirror the problems of [sexual abuse] within the macro-culture’.

Galletly (1993) also made some interesting points, noting that at the time of writing there were no published surveys of attitudes and practices of Australian mental health professionals with regard to sexual relations within therapeutic environments. She concluded her article by suggesting that there is a “lack of readily available information and support services for victims [and this] could reasonably be seen as an area that psychiatrists could take some responsibility. As a profession, psychiatry has the choice of confronting this issue or avoiding it” (Galletly, 1993, p. 138). Such sentiments, while directed to the Australian situation, might be worth considering in the New Zealand context, given there appears to be an absence of local research on sexual relations in therapeutic environments. It might well be that clients of service and potential clients of service could find such information useful.

Conclusion

While the articles discussed above are not always based on New Zealand research and practice they do have a connection to New Zealand, or appear in New Zealand based journals. All of the above commentary, directly or indirectly, influences New Zealand’s discursive framework on therapeutic sexual exploitation. The challenge, it seems, is for the New Zealand based psy-disciplines of counselling and psychotherapy to open up the

conversation on therapeutic sexual exploitation and place it in the public domain. This would make therapeutic sexual exploitation within New Zealand visible, 'sayable' and worthy of research. It would ensure that individualized clients of service had a context to understand how their personal experiences might fit within a broader political framework, affected by power relations and silence. This would, in effect, continue the process of re-selecting, re-organising and re-distributing the current New Zealand discourse on sexual relations in therapeutic environments.

The next chapter is an extension of this discussion. In the absence, it seems, of local research data and discussion, the next chapter explores a related form of scientific discourse that appears through four New Zealand based therapeutic associations' Codes of Ethics. The following chapter asks, if local scientific literature makes therapeutic sexual exploitation 'unsayable' and invisible, how has it come to pass that New Zealand based therapeutic ethics committees have created ethical standards prohibiting therapeutic sexual relations. In reading these two chapters together, an analysis can be undertaken on how New Zealand's discursive framework on therapeutic sexual exploitation has been controlled and organised and into the 'sayable' and 'unsayable'.

Chapter Six: Controlling the Discourse in New Zealand

The ‘Sayable’ About Therapeutic Sexual Exploitation

Introduction

The preceding chapter has shown that there appears to be a gap, or a silence, in New Zealand’s scientific research on therapeutic sexual exploitation. However, this chapter will reveal, when undertaking a close textual analysis of various New Zealand based Codes of Ethics, that sexual relations within therapeutic environments has, nonetheless, featured as a therapeutic professional issue for at least 14 years. This presents an anomaly. If discourse is organised to avoid its awesome materiality, as Foucault (1969/1972) suggested, then it is interesting to note that local research into therapeutic sexual exploitation has not been readily available, while current Codes of Ethics, which describe ethical standards of practice, have been readily accessible. This chapter is interested in such anomalies. Why have New Zealand based counselling and psychotherapy associations organised the distribution of knowledge on therapeutic sexual exploitation in this way?

In endeavouring to answer this question, this chapter will be drawing upon four New Zealand based therapeutic associations and their Codes of Ethics. The associations are the: New Zealand Association of Counsellors (NZAC), New Zealand Association of Psychotherapists (NZAP), Australian and New Zealand Psychodrama Association (ANZPA) and Gestalt Australia and New Zealand (GANZ). Like the previous chapter, the methodological principles of reversal and discontinuity are employed. The first section in this chapter looks at the above four associations’ current Code of Ethics, as retrieved from electronic media, in October 2009. It will be describing the current discourses as they relate to four issues: how the terms client and practitioner are being used; how unethical sexual behaviour is being defined, how a safe therapeutic environment is currently framed, and finally, how responsibilities to third parties such as families, are currently depicted. This information will reveal how the New Zealand disciplines of counselling and psychotherapy are currently framing, creating and codifying what they consider to be ethical practice based on scientific knowledge. This is, in effect, part of the ‘sayable’ scientific knowledge.

After identifying New Zealand’s current expert discourse on therapeutic sexual exploitation, as taken from four Codes of Ethics, a comparison will be made to other discourses from the American Counseling Association’s Code of Ethics (2005) and the British Association of Counselling and Psychotherapy’s Code of Ethics (2010). This is the

second section in this chapter. This section will be analysing what aspects of New Zealand's discourse on therapeutic sexual exploitation fits within a globalised Western discourse, and what aspects more readily relate to a localised New Zealand discourse on therapeutic sexual exploitation. It will also be able to highlight any international silences in the area of therapeutic sexual exploitation.

The third section returns to a close text analysis of New Zealand's Code of Ethics and asks the same four questions as section one. In this section, however, the material under analysis is NZAC's and ANZPA's historical Codes of Ethics. One of the challenges I faced in this dissertation was accessing historical copies of Codes of Ethics from the four above mentioned therapeutic associations. Current copies, not historical copies, are available through websites. Therefore, I wrote to the four above associations explaining my research topic and asked for their assistance to help me locate historical copies of their Codes of Ethics. Except for NZAP, none of the organisations acknowledged receipt of my letter, and not one of the organisations responded to my request for information or assistance (Personal Correspondence, E. O'Keefe, NZAP, 6.4.2010). Their lack of response is one aspect of this dissertation's research findings. While I do not know the reasons for this lack of response, it will be remembered from chapter four, that it has not been uncommon for those researching the occurrence of therapeutic sexual exploitation within their local context, to be presented with hurdles from those within the therapeutic professions. I was, however, able to access privately, through the kind assistance of others, some historical copies of NZAC and ANZPA Codes of Ethics. Therefore, even with the obstacles presented in obtaining historical Codes of Ethics, this second section is able to undertake a small effective history on Codes of Ethics of two New Zealand based therapeutic associations.

In adopting this methodological approach an attempt is made to understand current Codes of Ethics from within their own historical frameworks. In using a close textual analysis one must remember that the purpose of studying statements is because statements are not neutral. They have a direct relationship with the material world and with power relations. Foucault (1969/1972, p. 116) suggested: "A statement belongs to a discursive formation as a sentence belongs to a text and a proposition to a deductive whole... The analysis of the statement and that of the formation are established correlatively."

What this means is that the statements which are under examination from the various Codes of Ethics are not benign; they are connected to the discursive formation on therapeutic sexual exploitation. This means that they exist within and influence: respective

local disciplines, the origin of the term transference, other psy-disciplines and New Zealand based laws of disorder and treatment. These statements can be related to overseas Codes of Ethics, voices of political action groups of psy-clients and psy-patients, academic literature and research on sexual relations in therapeutic environments – or its absence. As chapter eight will explain, these New Zealand based ethical standards are also linked to complaint processes, registration boards, statute law, common law and New Zealand's Accident Compensation legislation. The upcoming close textual analysis, the analysis of statements, which may seem removed from the research question, *is a necessary part of* a more complex analysis of New Zealand's discursive formation pertaining to therapeutic sexual exploitation. Foucault identified the value of studying statements in the following way:

To describe statements, to describe their enunciative function of which they are the bearers, to analyse the conditions in which this function operates, to cover the different domains that this function presupposes and the way in which those domains are articulated, is to undertake to uncover what might be called the discursive formation (1969/1972, p. 116).

This is the value of studying statements as they appear in various current New Zealand based Codes of Ethics; once identified, they can then be connected to the extra-discursive, to other discourses and to the material effects that are not immediately visible within the benign scientific codes of ethical practice.

The most prominent theoretical feature of Foucault's which will be evidenced in this chapter is that of appreciating that knowledge-power is best seen, initially, from a micro-political perspective. Hook (2007, p. 64) explained this further:

Foucault is typically concerned with pinning down the discrete procedural logic of power as it is manifest at a micro-political level ... In opposition to sociological, structural or economic analyses, Foucault advances the need to engage the elementary specifics of how power is exercised at the precise and localised individual levels of particular institutional interfaces; he prioritizes as such the specifics of how power is 'interacted' between subjects and institutions.

This chapter is part of that process of exploring the interaction between subjects and institutions at the micro-political level. To do that, one must first examine how New Zealand based therapeutic associations are defining ethical and unethical behaviour in the area of therapeutic sexual exploitation.

Section One: An effective history. The Current Scientific Discourse on Ethical Practice

The following four subsections, in the first instance, will be comparing the discourses on ethical practice from four current New Zealand based therapeutic associations. The specific four areas explore the definitions of: client and practitioner; unethical sexual relations in therapeutic environments, the responsibilities of therapeutic practitioners to provide a safe therapeutic environment, and the therapeutic practitioner's duty of care to third parties, such as families. This information was electronically retrieved in late 2009 from these organisation's respective websites.

This is primarily a descriptive process, however, after explaining the material, critical questions will follow at the end of each subsection. The questions are not raised to be answered immediately, but to heighten awareness that various social and political conditions, rather than science, may have influenced the emergence of such ethical standards. To ensure that the four points under exploration do not become too convoluted and over-ridden with quotes from the various Codes of Ethics, references to relevant sections will be noted, and full quotes can be seen in Appendix One.

Current scientific definitions of client and therapeutic practitioner

In their Codes of Ethics NZAC and GANZ have been explicit in defining a client as someone in the role of a client, trainee or supervisee who is receiving a professional service from a member or therapist. ANZPA's definition of client has referred to all those with whom the member has a professional relationship, including trainees in training. NZAP's Code of Ethics is intended to cover all spheres of a psychotherapist's practice. ANZPA was the only association to note clients may also be organisations. Practitioners were referred to as members or applicants under NZAC's Code of Ethics. ANZPA refers to practitioners as members, which may include various forms of membership categories. NZAP and GANZ refer to practitioners as therapists. Clients, therefore, might be currently seen as the persons/organisation with which the member/practitioner has a professional relationship. The relationship is one in which a 'therapeutic service' is being provided. From this it seems then a therapeutic service can take place in a therapeutic, training and/or supervision environment.

The historical analysis, in section two of this chapter, will explore how the term client has been re-defined over time. For now it is noted that client has not always included the roles of trainees and supervisees, however, when associations are defining

client in a generic sense, client now includes trainees and supervisees. It is worth noting a discrepancy between the associations over the word practitioner. Two associations, NZAC and ANZPA, refer to therapeutic practitioners as members or associates, and not as therapeutic practitioners. One might consider what the material affects of this terminology, particularly when qualified and non-qualified practitioners are classified under the same title. It could be argued that this might increase the risk of blurring lines of accountability between non-qualified members and those who are qualified therapeutic practitioners. Alternatively, it might inadvertently obscure the power relations inherent in a client of service and therapeutic practitioner relationship, since all people can be classified as members of the Association.

Current scientific definitions of unethical sexual relations

The above generic definitions of client are not consistently applied to the area of unethical sexual relations. NZAC (5.13) and ANZPA (2.3.a) deem sexual *or romantic* activity with clients as being unethical. NZAC specifically apply this codified protection to clients and trainees (10.6). Different language is used for the role of supervisee, suggesting it is the supervisor's responsibility for maintaining boundaries between supervision and other relationships (9.2). It is left unsaid by the Association as to whether they consider it unethical for supervisors to have sexual relations with supervisees.

ANZPA make a general comment that members will not engage with sexual *or romantic* activities with clients. Again, it is unclear whether 'client' is been used in the generic sense of a fee-paying client of service. Such ambiguity is intensified especially given section 2.3.d. "Members will alert their supervisor to any inclination to consider any relationship other than a professional one..." It could be that attending supervision to discuss such matters is the only ethical requirement prior to commencing a sexual relationship with one's trainee or supervisee.

NZAP are explicit that power imbalances exist in therapeutic relationships. They provide a list of certain sexual behaviours that could be deemed as unethical: sexual comments, sexual harassment, sexual advances – some of which will involve no physical or sexual contact (1.16). NZAP are explicit in naming that sexual relations with a client, trainee or supervisee is unethical (1.16 and 2.13).

GANZ is the only association that frames sexual relations in therapeutic environments as sexual exploitation: "At all times the needs of the client, supervisee or trainee takes precedence over the personal needs of the therapists, never exploiting the

client sexually, or for personal, financial or other gain” (iv. 1). The use of the phrase ‘sexual exploitation’ is significant because of legal terminology to do with breaching fiduciary duty of care. While this will be discussed further in chapter eight it is worth noting here that GANZ is the only association that frames therapeutic sexual relationships as therapeutic sexual exploitation.

Another dimension to the ethical standards on sexual relations relates to past clients. NZAC state that counsellors shall not exploit the intimacy made possible in the counselling relationship even after counselling has ended (5.13). It is unclear whether this term counsellor is meant to cover all roles of the therapeutic practitioner, or just the client/counsellor relationship. NZAP requires therapeutic practitioners to avoid sexual relations with former clients when the dynamics of psychotherapy can reasonably be expected to influence the relationship in an ongoing manner. NZAP does make a distinction, however, between past clients and past trainees and past supervisees. While NZAP requires that therapeutic practitioners abstain from sexual relations with current supervisees and trainees, due to a silence, it seems they do not require trainers and supervisors to abstain from having sexual relations with past trainees or past supervisees. (1.18).

ANZPA also states that members will not exploit the intimacy made possible by any professional relationship (2.3.b). ANZPA does not relate this statement specifically to sexual relations to past clients of service or to current trainees or supervisees. GANZ makes specific reference to ex-clients, noting that due consideration, through supervision, must be given prior to entering any relationship with an ex-client. If adopting GANZ’s opening definition of client this would also apply to trainees and supervisees.

It is not clear why the generic term of client, which had previously been defined to include clients, trainees and supervisees, in all the Codes of Ethics, was not used in a generic sense when addressing issues of unethical sexual relations. This is an anomaly. In situations of therapeutic sexual exploitation, the generic term of client is no longer applicable. This suggests that clients of service are not to be considered in the same way in such circumstances. It is also interesting to note an inconsistency between the four associations as to whether it is unethical to have sexual relations with one’s trainee or supervisee. Finally, there is one consistency between the four associations. Unethical sexual behaviour is not limited to sexual contact or sexual intercourse but can include a range of sexualised behaviours, including romantic or sexualised behaviours, all of which are deemed to be harmful to clients of service.

Current scientific definitions of a safe therapeutic environment

ANZPA's Code of Ethics requires members to provide a safe working environment and take action to protect clients from harm (2.2). NZAC requires members to take all reasonable steps to protect clients from harm and as far as possible, protect group members from "physical threats, intimidation, coercion, undue pressure and psychological and/or physical harm." The same ethical standard applies to trainers (12.1).

NZAP note that therapeutic practitioners have a responsibility to provide a safe therapeutic environment. This includes group settings. Harm is defined only in terms of psychological and physical harm. NZAP, though, does note that some distress is an inevitable part of the process (1.14). GANZA suggests members should take reasonable steps to avoid *intentional or deliberate harm* to clients (i:2). This suggests that there are other types of harm, perhaps unintentional or accidental harm, which is not considered a matter of ethical concern. GANZA is the only organisation that acknowledges that when harm does occur, members must take responsibility for restitution – and professional indemnity should be considered (i:2).

Currently, New Zealand's discourse suggests that sexual harm is not a type of harm that therapeutic practitioners need to protect clients of service from in any therapeutic group setting. This, it will be shown shortly, is not limited to New Zealand's therapeutic discourse. What might be considered a reasonable step for a therapeutic practitioner to take to ensure clients of service do not incur intentional or unintentional harm? Why has negligent practice not been framed as an ethical issue, regardless of issues of intentionality? Would teaching about, or establishing rules about, sexual safety and sexual boundaries within a therapeutic group environment, the issues and impacts, be considered a reasonable first step in ensuring client sexual safety?

Current scientific definitions of care and responsibility to third parties

NZAC (5.1) and ANZPA (2.3) refer to responsibilities to third parties indirectly through exceptions to confidentiality clauses. If third parties were at serious or imminent risk then therapeutic practitioners or members have a duty break confidentiality to protect third party interests. GANZ (iib) extends the exception to confidentiality to include serious damage to property belonging to third parties. NZAP alludes to such matters, stating safety or legal obligations may override confidentiality, and that psychotherapists will discuss these limits with clients (1.6). NZAC in their ethical principles, do suggest that counsellors will promote the safety and well-being of families/whanau and iwi/communities, although

it is not clear how this might be actioned (4.5). GANZ also requires therapeutic practitioners to consider the social context of their clients and their connections to others (1.4).

This raises the question as to how therapeutic associations understand their responsibilities to third parties, to whaanau and communities, in situations of therapeutic sexual exploitation. Would having sexual relations within a therapeutic environment be considerate of the client's connections to others – or to one's own possible connections to family? Furthermore, if a sexual relationship is occurring within a therapeutic environment, and this is known by another practitioner/member, what is their ethical duty to third parties? Is having confidential sexual relations framed as a confidential therapeutic concern that is not to be disclosed to family members? Or given the potential for psychological and emotional harm caused to absent family members, would confidential sexual relations in therapeutic environments be seen as an ethical issue that third parties should be informed about? If there was to be any local scientific literature on therapeutic sexual exploitation, would it be prudent to also include family members' perceptions of what might constitute safe therapeutic practice, that ensures their emotional and psychological safety also.

The 'unsayable' within the 'sayable'

The previous chapter showed that there has been a lack of New Zealand based research or academic discussion about therapeutic sexual exploitation. Yet, as this chapter has already illustrated, New Zealand therapeutic associations, through their current Codes of Ethics, refer to the ethical issue of therapeutic sexual relations. While there is not always a consistency of discourse between these New Zealand therapeutic associations, one could argue, that the following is 'sayable', in a generalised sense, about therapeutic sexual exploitation within New Zealand:

New Zealand therapeutic associations have codified ethical standards about sexualised behaviours in therapeutic environments. These standards state that it is unethical to have sexualised behaviours with one's client in a therapeutic setting. It may be considered unethical to have sexualised behaviours with one's trainee. It is less likely to be considered unethical to have sexualised behaviours with one's supervisee. In some cases, it may be unethical to have sexualised behaviours with a previous client. It is unlikely to be considered an ethical concern to have sexualised behaviours with a

previous trainee or client. It is incumbent upon therapeutic practitioners, when running any therapeutic groups, to take reasonable steps to ensure every member's physical and emotional safety. Therapeutic practitioners will consider the safety of third parties if they are in serious and immediate danger of being hurt.

However, as Foucault (1969/1972, p.118) stated,

...everything is never said; in relation to what might have been stated in natural language, in relation to the unlimited combination of linguistic elements, statements (however numerous they may be) are always in deficit ... there are in fact, in total, very few things that are said.

What has been said in New Zealand on therapeutic sexual exploitation, therefore, has been selected to say. It might be argued that the following paragraph is some of the 'unsaid' within in these Codes of Ethics:

While sexual relations with a client, trainee, or even a supervisee, might be considered unethical, it is unlikely to be framed as sexually exploitative behaviour. Trainees and supervisees may be more likely to be seen as accountable for their behaviours and for the sexual behaviours of their therapeutic practitioner, regardless of their own emotional, vulnerable, and trusting state as a client of service. Therapeutic practitioners do not have to ensure that client-group members do not get sexually harmed whilst in therapeutic group environments. Therapeutic practitioners do not have a duty to protect third parties, such as family members, from psychological harm which may result due to sexualised relationships occurring within **any** therapeutic environment. Therapeutic practitioners, as long as their acts or omissions are not intentional or deliberate, cannot be held to account for negligent practice which causes harm to client of service or third parties.

Section Two: An International Discourse on Therapeutic Sexual Exploitation

To discuss what is seemingly 'sayable' or 'unsayable' is not to suggest that what remains unsaid is more valid or more truthful than what has been said. As Hook (2007) points out, the 'unsaid' will not bring out an indisputable truth. That is not the point of analysis. The point of analysis is to trace the links between knowledge-power, silence and masked practices. To appreciate more fully the impact of the 'said' and the 'unsaid' within New Zealand's scientific discourse on ethical standards, it is useful to return to the

previous chapter and compare New Zealand's discourse from Codes of Ethics, to those from the United Kingdom and Great Britain.

As mentioned in chapter four, the American Counseling Association Code of Ethics (2005) prohibits sexual relations specifically with clients, trainees and supervisees (Wheeler & Bertram, 2008). This is the same for the British Association for Counsellors and psychotherapists (British Association of Counselling and Psychotherapy, 2010). While there are differences in the various New Zealand Codes of Ethics on this matter, it may be said that an international discourse, based on Codes of Ethics, is likely to interpret that it is unethical for any therapeutic practitioner to have sexual relations with any current client of service. What is unique is that the ACA Code of Ethics also prohibits a therapeutic practitioner having sexual relations with a client's romantic partner or family member (cited in Wheeler and Bertram, 2008).

With regard to sexual relations occurring between therapeutic practitioners and past clients, there appears to be less certainty. A range of responses can be noted. At one end of the spectrum, the ACA Code of Ethics (2005) currently prohibits sexual relations with ex-clients, their romantic partner or family members for a period up to five years. If a practitioner is considering a sexual relationship after five years, it is incumbent on the practitioner to provide forethought and written documentation to show how such a relationship will not harm the ex-client (Wheeler and Bertram, 2008). At the other end of the spectrum ANZPA's Code of Ethics (2009) suggest that members/practitioners only have to discuss with a supervisor the possibility of entering into any other type of relationship with an ex-client (ANZPA, 2009, Code of Ethics, s. 2.3.d). There appears to be no consensus on this matter.

Two things that do appear to be consistent under all six current Codes of Ethics is that therapeutic practitioners running groups must take reasonable precautions to protect clients from physical or psychological harm or in the case of ACA, protect clients from trauma (Wheeler & Bertram, 2008). The other point of consistency is that all Codes of Ethics expressly acknowledge that client confidentiality may be broken in cases of imminent danger when it is believed third parties may be at risk of significant harm. Jenkins (2007, p. 124) noted the legal test for this is likely to be: 1) the risk was foreseeable; 2) the risk was to an identifiable individual, and 3) there was sufficient proximity, or a close and direct relationship, between the client and the third party, to warrant a duty of care” .

The final point to be made from this united international discourse is that it appears universally ‘unsayable’ to suggest that clients of service, as group members, can be sexually harmed due to sexual relations occurring between each other and that this might cause significant harm for them and their family members. This is the focus of investigation in the following chapter. So, while variations exist, for the most part, New Zealand’s current definitions fit into a powerful international Western discursive formation about what therapeutic experts consider to be unethical sexual behaviour in therapeutic environments.

The next section will be undertaking an effective history, an aspect of Foucault’s methodological principle of discontinuity. In essence this principle asks the researcher to explore more closely the cause-effect patterns of explanation because “[w]ithout this form of historical explanation, one’s analysis is likely to remain limited, insulated within the context of its analytical activity” (Hook, 2007, p.121). This is a history of the present. It is used as a means to interrogate the current discourse about sexual relations in therapeutic environments noting historical values and historical silences.

Section Three: An Effective History. Understanding today through recourse to yesterday

ANZPA’s history

ANZPA’s first Code of Ethics was adopted in 1994. ANZPA’s practice first began in Australia in 1971. It was not until 1980 that it established itself in New Zealand and it was 14 years later when ANZPA adopted its first formal Code of Ethics. The rationale for adopting a Code of Ethics in 1994 was explained due to an enlargement of practitioners and training institutes in Australia and New Zealand, as well as a heightened consciousness of ethics and ethical standards in the community at large (ANZPA, 1994). Two other copies of ANZPA’s Codes of Ethics, dated January 2007, and January 2009 (Australian and New Zealand Psychodrama Association, 2007, 2009) will also be examined. It is uncertain whether additional copies of ANZPA Codes of Ethics exist between the 1994 and 2007 versions. The 1994 Code of Ethics differs significantly in style and format from the 2007 and 2009 versions. The latter two Codes are primarily the same, with only one slight amendment around the definition of client. (See Appendix Two for full quotes).

A history – defining client and therapeutic practitioner

The definition of client and therapeutic practitioner has altered over time. In the 1991 ANZPA Code of Ethics clients were defined as individuals, groups, communities, institutions or organisations who were the focus of the practitioner's professional service. Practitioners were those who had graduated as psychodramatists or other roles and all members of the Association (whether graduated or not). By the 2007 Code of Ethics the word practitioner had been deleted and there were only members and clients, although sub-categories existed within those fields. Client referred to all those with whom the member had a professional relationship. The only change noted in the 2009 Code of Ethics, compared to the 2007 Code of Ethics is that ANZPA now specifically stipulated that trainees are to be considered clients. This change, therefore, clarifies any possible earlier ambiguity. Fee paying trainees are clients of service.

In noting changes one wonders what the conditions of possibility were in 2007 that led to ANZPA clarifying in writing that trainees are clients. What are the material effects of removing the word practitioner from the 1991 Code of Ethics and renaming all qualified and non-qualified practitioners under the same generic term of 'member'?

A history – defining unethical sexual relations in therapeutic environments

In the 1994 ANZPA Code of Ethics, therapeutic practitioners were not to engage in sexual activity with their clients 'whilst clients were in therapy' (2.3.3.e). Trainers were not to exploit trainees financially, psychologically, physically or in any other manner detrimental to a trainee or advantageous to the trainer (3.2.c). No specific reference was made to sexual exploitation between trainer and trainee. In fact the 1994 Code stated,

[w]here a friendship with a trainee progresses to the point where *they* are contemplating a sexual relationship, practitioners have a choice: either to stop the relationship or terminate the professional relationship. Unless special circumstances apply, practitioners have a clear responsibility to ensure that the trainee is appropriately referred to another professional (3.2) (*italics added*).

By the 2007 Code of Ethics amendments had been made. Members were not to engage in sexual or *romantic* activity with clients. The 'whilst in therapy' phrase had been deleted (2.3.a). No specific reference was made to sexual relations with trainees or supervisees. There were, however, general clauses: members will not to exploit the intimacy made possible by the professional relationship; members will not exploit clients

for personal, professional or financial gain; members will alert their supervisor to any inclination to consider any relationship other than a professional one (2.3 and 5.3). These more general statements could be interpreted as applying to trainees and supervisees, thus offering some sort of protection against therapeutic sexual exploitation. However, the wording is slightly ambiguous.

What was the rationale for deleting ‘whilst in therapy’ clause’? Is it ethical or not to have sexual relations with a past client? What were the political or social motivations for amending their 2009 Code of Ethics that now explicitly stated that trainees could be considered clients? While not stated in later Codes, does the 1994 suggested resolution to the trainer/trainee sexual relationship issue still apply? Is it still acceptable to move a trainee on to a new therapeutic so a sexual relationship between a trainer and trainee can flourish?

A history – defining the responsibility to provide a safe, therapeutic environment

In ANZPA’s 1994 Code of Ethics it was said:

Recognising that the training process may include sessions in which sensitive, personal and private information may be revealed by both trainees and trainers, trainers maintain the same high levels of confidentiality for training groups as are appropriate to therapeutic and personal growth groups, and teach these standards to their trainees (3.2.g).

This section is deleted in later ANZPA Codes of Ethics. Also in the 1994 Code of Ethics, it was stated that practitioners were to make every effort to assist individuals in not coming to physical or psychological harm resulting from interactions within the group. In the two subsequent Codes of Ethics reference to providing a safe therapeutic environment is brief: “Members are to provide a safe working environment and to take action from preventing clients from harm” (2.2.6). No mention is made of keeping clients safe from harm due to interactions within group settings.

What led to the deletion of the section that acknowledged training groups are akin to personal therapy groups, where trainer’s share personal information about themselves in a group? What sort of action might a therapeutic practitioner be expected to take to ensure clients did not come to harm? What were the reasons behind deleting the phrase that acknowledged clients can come to harm due to client interactions within groups? Under what conditions has sexual harm not been considered a form of harm that client-group members may be vulnerable to?

A History – defining care to third parties

In the 1994 Code of Ethics reference to third party interests stays limited to exceptions to confidentiality, when there is perceived imminent danger posed by a client to self or another. Who might be contacted in such a situation was left open in the 1994 version. However, in the 2007 and 2009 versions, it stated “Members will alert appropriate authorities and third parties in the event of imminent threat of harm to a client or third party” (2.3.g)

How is harm defined in such circumstances? Given that therapeutic practitioners often work with clients who carry significant psychological harm, does harm include imminent threat of psychological harm to third parties? Or is harm only framed in terms of physical harm? Is this not an anomaly, given how the psy-profession deal with the short term and long term impact of psychological harm? For what reasons did subsequent Codes of Ethics codify their exclusions to confidentiality so it could include contacting ‘authorities’?

The questions raised above cannot be answered in this dissertation. They are raised to highlight that there will be a social and political histories behind Codes of Ethics. Current Codes of Ethics, while they may appear a-historical, are not. They come with a history. The codified ethical framework around therapeutic sexual exploitation comes with a history. The following section, which explores historical copies of the New Zealand Association of Counsellors Codes of Ethics, is offered as a comparative analysis to the section above.

An Introduction to NZAC’s Code of Ethics

Four documents were located in relation to the development of NZAC’s Code of Ethics: New Zealand Counselling and Guidance Association Code of Ethics (1976); Draft Code of NZAC Ethics (1991) and the New Zealand Association of Counsellors, Code of Ethics (2009) The fourth document located was written by Winslade, J. (1991) *Activating The New Code of Ethics*. It explained some of the reasons behind the re-wording of the 1991 Draft Code of Ethics.

I cannot comment on the likelihood of other versions of NZAC Codes of Ethics that may have featured between the ones itemised here. Nor am I able to comment on whether the 1991 Draft Code of Ethics was ratified as NZAC’s 1991 Code of Ethics. Nevertheless, by referring to all four documents changes in NZAC’s discourse on therapeutic sexual

exploitation can be noticed. Winslade's (1999) document is useful for additional commentary about the relationship between silence-power-knowledge and this shall be discussed at the conclusion of this section. There have been dramatic changes in NZAC Code of Ethics since 1975, with size and detail being the most visibly obvious. In 1975, the NZAC Code of Ethics had six principles. In 2009, the NZAC Code of Ethics had 143 guidelines. (Refer to Appendix Three for full quotes).

A history – defining client and therapeutic practitioner

The definition of who is a client and who is a practitioner has been extended enormously over time by NZAC. In the 1975 Code of Ethics no definitions were provided. In the 1991 Draft Code of Ethics the words counsellor and client were used throughout the document but there was no reference to other associated professional roles. By the 2009 Code of Ethics, twelve titles were identified as being applicable to members of the counselling association, including supervisor, trainer, spiritual advisor, and coach. Client referred to anyone receiving 'counselling services'.

What have been the social forces that have led to the adoption of such a broad definition of counsellor in the 2009 Code of Ethics? Does this raise questions of accreditation? Who is deemed suitable to assess one's competency to be a spiritual advisor?

A history – defining unethical sexual relations in therapeutic environments

In NZAC's 1975 Code of Ethics sexual relations, dual relationships, sexual abuse or sexual exploitation were not mentioned. However, it is interesting to note that in the 1991 NZAC's Draft Code of Ethics the term 'sexual exploitation' was used to describe unethical behaviour, noting the connection to abuse of power. The term sexual exploitation was included in a list with unacceptable exploitative behaviours. I have not seen the term sexual exploitation being included within other New Zealand based Codes of Conduct. GANZ's 2009 Code of Ethics is the exception to this.

By 2009 the discourse has been changed and organised differently. Sexual relations were now a category in their own right and the word exploitation was not applied to this type of abuse of trust. This later document, like ANZPA's latter documents, extended the definition to include sexual *or romantic* activity with clients as being unethical (5.13). In 2009 NZAC were explicit in stating sexual relations with trainees was unethical. The application of such a standard to trainees and supervisees is absent in earlier Codes. The

2009 Code of Ethics does not state specifically that sexual relations between a supervisor and a supervisee are unethical, but rather that the supervisor is responsible for maintaining boundaries between supervision and other relationships (9.2). For the first time in 2009 NZAC made reference to the fact that practitioners must be careful not to exploit past clients: "... counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after counselling has ended" (5.13).

These changes leave questions. What was the reasoning behind NZAC deleting the term sexual exploitation from their 1991 Code? What made NZAC think they should include that counsellors should not exploit the intimacy made possible in the counselling relationship ... even after counselling has ended? Has this been a common issue in New Zealand? Under what conditions did it seem appropriate to extend unethical behaviour to include both sexual *and romantic* behaviour? Would this suggest clients can be, and have been, harmed in therapeutic settings when the unethical behaviour has had undertones of a sexual component?

A history – defining the responsibility to provide a safe, therapeutic environment

In NZAC's 1975 Code of Ethics, responsibility to provide a safe therapeutic environment was not directly mentioned. In 1991 the Draft Code of Ethics made reference to protecting group members from physical or psychological harm resulting from group interactions. Also in the 1991 Draft Code of Ethics, under the principle of 'do no harm' counsellors were not to use any counselling methods that caused harm to clients. However, in the 2009 Code of Ethics, this had been reworded to ensure that counsellors take all reasonable steps to protect clients from harm, as opposed to counsellors ensuring they do not employ methods that cause clients harm. In terms of protecting client-group members from each other, the 2009 Code of Ethics provided a list of possibilities as to how client-group members may be hurt in therapeutic group situations: physical harm or psychological harm due to physical threats, intimidation, coercion, and undue peer pressure (s.12.1). A new section also appeared in the 2009 Code of Ethics. Under section 10.3 it was stated that "teachers shall take reasonable steps to protect participants from harm."

There are a number of significant discursive changes between these Codes of Ethics. What prompted the inclusion that therapeutic practitioners, as trainers, were to ensure the safety of participants? Why are trainees (who are usually defined as clients) referred to as participants? Are they not still seen as fee paying clients who are in a group setting? Why has sexual harm not been included as a type of harm client-group members might

experience in this therapeutic environment? Would behaviours like ‘romantic’ interactions, sexual voyeurism, sexual grooming, and sexual predation be considered possible behaviours group members might need protection from given the vulnerable states they can be in due to the nature of therapeutic group work? This particular issue, as stated earlier, is the focus of the following chapter.

A History – defining care to third parties

Care to third parties was not mentioned in the 1975 Code of Ethics. In the 1991 Draft Code of Ethics, responsibilities to third parties are mentioned twice. As with ANZPA’s Code of Ethics, reference has been made to protecting third party interests in cases of perceived imminent harm. The 1991 Draft Code of Ethics referred to counsellors contacting responsibility authorities when third parties are perceived to be in imminent danger. This is repeated in the 2009 Code of Ethics. As mentioned in section two, NZAC make indirect reference to members’ responsibility to family under the principle of autonomy both the 1991 and 2009 Codes. The 1991 Draft Code states that “counsellors shall respect the dignity and worth of every individual, the integrity of families/whanau and the diversity of culture.” The 2009 Code states it a little differently: “Counsellors will promote the safety and well-being of individuals, families, communities, whanau, hapu and iwi” (point 3).

Many similar questions that were asked for ANZPA under this point can also be asked of NZAC. However, under the 1991 Draft Code of Ethics, how would sexual or romantic relationships in **any** therapeutic environment be respecting the dignity and worth of family – who are at home? How would a sexual or romantic relationship in **any** therapeutic environment be promoting the safety and well-being of families or communities? Who might be responsible for instigating, setting, educating, monitoring, researching, enforcing these standards in therapeutic settings: fee paying clients, clients as participants, family members – or therapeutic practitioners and therapeutic associations?

Section Four: An Inside Word

These questions are intended to draw attention to the social construction and political influences of knowledge creation, organisation and distribution. They cannot be answered in the scope of this dissertation. A most useful document that can provide some possible insights to these questions is Winslade’s (1991) article that appeared in the NZAC newsletter. Winslade was involved in the drafting of the Draft Code of Ethics (1991) and

he provided reasons behind the changes in documentation. The first point Winslade (1991, p. 38) made was that amendments needed to be made to the previous Code because it seemed that it was not legally tight and this needed to be addressed. He noted that “there have been enough recent experiences of legal threats to counsellors to warrant us giving ourselves a more leak-proof ethical umbrella under which to shelter” (Winslade, 1991, p.38). It would be interesting to know what sort of therapeutic practitioner behaviours compelled clients, or others, to make legal threats.

The connection between Codes of Ethics, the law and ethical practice was also discussed by Webb (1999). She was noting that in her experience as a therapeutic trainer, it was not uncommon that client-trainees became more concerned about legal issues when confronted with a professional ethical dilemma, rather than grappling with the ethical issues of a particular case. Given Winslade’s (1991) comments it may be that it has not only been therapeutic trainees who have become fixated upon their own protection under legal and codified forms of ethical practice. It may be, given the 143 guidelines in the 2009 NZAC Code of Ethics that therapeutic practitioners have deferred to codified ethical standards rather than being prepared to take an ethical stance on a potentially difficult or political issue.

Winslade (1991) reported a second set of drivers for change. He thought that there was an increased awareness of the dichotomy between individual freedom and the realities of power structures which can actually seek to inhibit various groups’ freedoms. He reported that NZAC recognised that counsellors not only have power as individuals, but they can also have institutional status and power over others, depending upon the social groups to which they belong. Certainly the 1991 Draft Code of Ethics was the most strongly worded in terms of labelling sexual relations in therapeutic environments as sexual exploitation. Winslade (1991) believed this change in wording around sexual exploitation was an improvement from other Codes of Ethics that had minimised such behaviour with a common but curious phrase. Sexual exploitation had previously been described as behaviour that was “incompatible with professional practice” (Winslade, 1991, p. 39).

Thirdly, Winslade (1991) noted that previously, most Codes of Ethics had been written with only one-to-one counselling sessions in mind. The 1991 Draft Code of Ethics sought to identify ethical issues which were peculiar to other types of counselling relationships (couples, families, groups, and organisations), hence reference to ethical issues of group safety. This commentary seemed to suggest that the 1991 NZAC Codes of

Ethics, perhaps like some or many Codes of Ethics, are not so much based upon research or totally driven by the desire to protect clients and families from professional negligence or exploitation. It may be argued that Codes of Ethics and their amendments might be based upon a wide variety of social forces that cause friction between aspects of the silence-knowledge-power triangle. One particular motivator may be for protection from legal challenge from harmed clients of service or families.

Conclusion

It will be remembered that archaeology, as one of Foucault's research methods, is primarily concerned with challenging narratives of progress, continuity and evolution. These smaller effective histories have been undertaken to show contradictions or anomalies in lines of reason. Given this purpose, three points will be made. The first anomaly to be noted is that while there are some similarities between various Codes, both nationally and internationally, there are also significant differences. How can this be if the practice of counselling and/or psychotherapy is similar to each other both here and overseas? Are such differences the result of localised research? It seems the answer, at least in a New Zealand context, would be no, given the lack of available data on this topic. Is this not an anomaly? It is ethical to have sexual relations with your trainee in this association but not in that association? It is ethical to have sexual relations with your client's partner in New Zealand but not in the United States?

The second contradiction is that ethical regulations prohibiting sexual relations in therapeutic environments are on the increase not the decrease. Why is this? Why is it that regulations now exist to protect clients, trainees, supervisees, family members, partners and past-clients? Has the question ever been asked as to whether such a proliferation of ethical standards is addressing the actual problem - or is there something more fundamentally problematic about the nature of the therapeutic interaction? Is a new ethical standard 'slapped on' like a metaphorical ethical band-aid to a 'new' occurrence of sexual exploitation without addressing whether initial ethical standards, or even the practice of therapy, might be inherently flawed?

Is the 'unity of ethical standards' that now appears in contemporary Codes of Ethics masking a series of events that remains hidden, undisclosed, under-reported and under-analysed? Is there a history of therapeutic sexual exploitation occurring between trainer and trainees, supervisors and supervisees, with sexualised or romantic activities? Is there a history of sexualising relationships with past clients of service? If the initial scientific

concepts of transference and counter transference are never questioned for validity, is there a danger of reproducing knowledge, reproducing ethics, based on previously untested modernist assumptions? Where are the voices of clients of service, partners and children in the creation, organisation and distribution about ethical standards of therapeutic practice?

How is the discourse on therapeutic sexual exploitation organised and controlled in New Zealand? Perhaps it is organised in this way: what is 'sayable' in New Zealand is that therapeutic associations have ethical standards around sexual relations occurring within therapeutic environments. What is not 'sayable' is the nature and extent of New Zealand's historical standards of practice and behaviour around therapeutic sexual exploitation - and the material effects this has had for clients of service and their families. The following chapter looks at an international 'unsayable': the nature and extent of sexual relations occurring between client-group members in therapeutic environments.

Chapter Seven: A Modification to the Principle of Exclusion

Sexual Relations Between Client-Group Members

Introduction

Syme (2003, p. 115) stated that “sexual dual relationships are always damaging and rightly are banned in every sphere of therapeutic activity.” The last three chapters have shown that there has been a significant increase in the labelling of sexual or romantic behaviours of therapeutic practitioners in various therapeutic relationships as being unethical. In America, this has even been extended to include relationships with ex-client’s partner or family members. New Zealand has also seen an increase in the forms of codification for unethical sexual relations in therapeutic environments. Nonetheless, I would suggest Syme (2003) is incorrect. There is at least one sphere of therapeutic activity that still permits the sexualising of therapeutic relationships: sexual relations occurring between client-group members.

Just as this issue has not featured in various Codes of Ethics, it also has not appeared to feature in academic literature that specifically addresses ethical issues in counselling and psychotherapy, or in academic literature that specifically addresses dual relationships⁹ (Allen, 1996; Corey, 2008; Corey, Corey, and Callanan, 1998; Goodrich, 2008; Herily and Corey, 1992; Heatherington, 2000; Hermansson, 1997; Jenkins, 2007; Kellerman, 1996; Ludbrook, 2003; McCamus, 1997; Moleski and Kiselica, 2005; Moreno, 1962; Pepper, 2007; Pepper, 2002; Pope, 1998; Russell, 1993; Rutter, 1989; Sarker, 2004; Syme, 2003; Webb, 1997; Wheeler and Bertram, 2008). The lack of data, or even an acknowledgement that sexual relations happen between therapeutic client-group members, makes it difficult to say to what degree this issue has been occurring in therapeutic group environments in New Zealand, or elsewhere.

Perhaps the silence on the topic could indicate that sexual relations between group members are not occurring at all, anywhere, or if it is, that it is not problematic for clients of service or for their families. However, like the experiences of Rutter (1989) and Russell (1993) my experience suggests that if one informally asks around, anecdotal stories about such incidents are readily provided. This is implicit knowledge. Somehow, it seems that sexual relations between client-group members has been a common, yet somehow, publically silenced phenomena. In contacting therapeutic practitioners who specialise in the

⁹ Schoener, G., in personal communication, suggested there has been debate in the United States on the ethics of therapeutic practitioners allowing or prohibiting sexual relations occurring between people who have been committed for acute and/or long time mental health treatment

area of therapeutic ethics, a general consensus appeared that there is little known literature or research on sexual relationships occurring between client-group members, and that such a topic would be a worthy to research.¹⁰

It is understandable that in the first instance one might think that sexual relations between client-group members is a different type of situation from sexual relations occurring between a client of service and a therapeutic practitioner, and there are, of course, differences. When looking at sexual relations between client-group members there is no obvious power differential; there appears to be no transference or counter-transference issues with which to contend; there is no emotional dependency and neither is paying the other for a professional service. In effect, client-group members may be considered to be autonomous adults who have made the choice to engage in consensual sexual or romantic relations. A therapeutic practitioner could not be held accountable, and nor should he or she interfere, in the sexual or romantic choices his or her autonomous clients make in this confidential, therapeutic environment. It may even be that such sexual encounters have been framed by therapeutic practitioners as being in some way therapeutically beneficial, a life enhancing learning experience for all concerned.

However, as has already been detailed, Codes of Ethics consistently state that therapeutic practitioners are required to provide, to the best of their ability, a safe environment for clients, including those in group situations. In discussing the American circumstance Wheeler and Bertram (2008, p. 44) explained:

The counsellor's duty to each member of the group is the same as in individual counselling setting. Professional services must be rendered according to the recognised standard of care expected by a competent counsellor.... The counsellor bears the increased duty of supervising the multiple interactions among the various group members and for protecting each member of the group from physical and/or psychological trauma that may result from the group setting.

In returning to recent media reports of the 1990 New Zealand Centrepont scandal, it was actually client-group members having sexual relations which each other that first alerted the New Zealand Police to unethical practices within the therapeutic environment. This came from a third party, a husband, who raised his concerns about Centrepont's therapeutic culture. His story went like this: The man's wife was in a vulnerable emotional state. She had been suffering from what has been more commonly termed post-natal

¹⁰ Personal correspondence with the following: Bond, T.; Goodrich, K.; Pepper, R. and Schoener, G.

depression, and was receiving the services of Mental Health Services as an out-patient. She was advised to attend a week long therapeutic workshop at Centrepont to help her work through her emotional distress. She did this and upon her return she informed him that she had slept with a half a dozen men whilst on this workshop. Understandably, this alarmed, if not devastated, the husband and he went to the New Zealand Police to express his concerns about the so called therapeutic community. However, no law had been broken, but the detective who initially heard this man's story was concerned and wished to start an investigation into the practices of this community. The recent report alleged that this officer's concern was sabotaged by a senior police officer – who was himself later to be convicted of sexual crimes against children (Hume, 2009).

The sexual abuse of children is unacceptable, especially in an environment of trust. My attention, for this dissertation though, has been drawn to the others in this story: the situation of the woman with post-natal depression who was client of Mr Potter's, and her husband. Where could the husband turn upon hearing his wife's story? No crime had been committed. Perhaps he could have made an internal complaint to the leader but he probably had little trust in internal complaints procedures – even if there was one. There was no national regulatory complaint's body against psychotherapists. Even if there had been on what grounds could the husband complain? He may have been distressed but distressed as an affected third party – not as a client of service. Who would he be making a complaint against: his wife, the other men, Bert Potter, Centrepont as an organisation? What right did he have to speak to anyone other than his wife? Was this not really a private marital issue between them both – hardly a matter of public complaint? What right did the woman have to complain – after all she was a consenting adult: perhaps emotionally compromised, or perhaps she was just looking for lots of sex with different men. She had no right to complain. It has not been reported that Mr Potter 'made her' have sex with anyone. Is such an issue really not an intra-personal and inter-personal issue for the couple to address? It could be argued that it has nothing to do with responsible, ethical, therapeutic practice.

The task of this chapter is to explore the issue of client-group member sexual relations more closely. Why might it be that client-group member sexual relations has not been considered a safety issue, an ethical issue, or an issue of sexual exploitation. In this respect, again, Foucault's methodological principle of discontinuity is useful. Three anomalies in the given discursive framework on therapeutic sexual exploitation will be studied. As a result of these explorations, a fourth anomaly will be presented. This final

anomaly is perhaps the most challenging, for it connects with two of Foucault's theoretical features: 1) that new knowledge is created when there is a change in power relations, and 2) modern day knowledge-power is focussed on controlling the soul. By the conclusion of this chapter an additional lens will be offered to view the safety and ethical issue of sexual relations occurring between client-group members in therapeutic environments.

Foucault's Methodological Principle of Discontinuity

Foucault's discourse analysis is used to decentre and destabilize meanings, and to "undermine their authority and uproot their coherence, unity or 'ahistory' upon which ... 'truthful' meanings are reliant" (Hook, 2007, p. 122). What follows in this chapter is an application of the methodological principle of discontinuity. The following exposition, therefore, will seek to destabilize the unity upon which 'truthful' meanings about ethical standards on sexual relations in therapeutic environments have been applied. In doing so, such an examination might offer a different perspective, new conditions of possibility, for why sexual relations between group members has been excluded as an ethical concern for practitioners and professional associations. It is not attempting to offer a new, more advanced truth, a closer approximation to objective science, or a more insightful approach to therapeutic techniques.

When applying Foucault's ideas to academic, scientific discourse, Foucault encouraged the researcher to distinguish between the history of ideas and the history of reason. The history of ideas, if it notices any irregularities or contradictions in a given discursive framework, attempts to apply the principle of cohesion, as a way of hiding such anomalies within its sphere of seemingly scientific field of expertise. The history of ideas is not interested in deconstructing itself; it is interested in presenting itself as knowledge based on progression and advancement. Foucault (1969/1972, p. 149) advised that this is done so others do not understand that -

men's [sic] discourse, is perpetually undermined from within by the contradictions of their desires, the influences that they have been subjected to, or the conditions in which they live; but to admit that if they speak, and if they speak among themselves, it is rather to overcome these contradictions, and to find the point from which [the contradictions] will be able to be mastered.

Foucault was suggesting here that knowledge is not so much based upon scientific discoveries but on the desire for people to gain or maintain their power within a specific

field, even if that is unconscious. Knowledge-power is a means for ensuring one's privileged position and its political objective is to ensure a facade of objectivity and rationality.

The history of reason, on the other hand, seeks to identify contradictions within a discursive framework. It seeks to undermine notions of the objective and the rational; it challenges the power of the expert. It seeks to unpick anomalies, to make them visible and to ask, how come knowledge came to be so. It asks these questions in a public manner, not in committee. What follows is an attempt to destabilize, to question, the seemingly apolitical, objective knowledge around what constitutes unethical sexual relations within therapeutic environments. It asks how did it come to be that sexual relations between group members has not been framed as unsafe, unethical and exploitative behaviour. Such questions can be asked, for as Foucault, (1969/1972, p. 67) said:

A discursive formation does not occupy ... all the possible volume that is opened up to it of right by the systems of formation of its objects, its enunciations and its concepts; it is essentially incomplete, owing to the system of formation of its strategic choices ... What we are dealing with is a modification in the principle of exclusion and the principle of possibility of choices; a modification that is due to an insertion in a new discursive collection.

In other words, a discursive formation can change when those who have been initially excluded from knowledge-power get to speak and to offer new possibilities, new discursive collections, within the discursive formation. At any given point, and at the end of this dissertation, there will remain discursive collections that have not spoken and that have continued to be marginalised in the scientific production of knowledge in a Western paradigm. However, for now, what follows is one new discursive collection, a modification to the principle of exclusion, and an alternative way of framing sexual relations between client-group members in therapeutic environments.

The Anomalies and Contradictions

Protecting clients from harm in therapeutic group settings – but not sexual harm

As was shown in the previous chapter's analysis, therapeutic practitioners, according to their own Codes of Ethics, are accountable for providing, to the best of their ability, a safe therapeutic environment for group members. At this point, though, the discourse

precludes affording such protection to instances of sexual harm or trauma. It is suggested, though, that client-group members might often find themselves in emotionally vulnerable states in therapeutic group settings. As a result, client-group members should be protected from *any* harm or trauma whilst in such environments, from either practitioner-group leaders or from fellow client-group members. This, it is argued, should explicitly include protecting clients from sexually exploitative behaviours from fellow client-group members.

However, the more relevant issue for those working within Foucault's framework, is to ask why has there been silence around this possible, probable or common ethical issue. Various conditions of possibility are offered to explain this anomaly. Webb (1997) suggested that therapeutic practitioners, as trainers and group leaders, do not generally discuss boundaries issues with trainees. Given this then, how are client-group members expected to understand and deal with such issues? Could it be that the issue of sexual exploitation within therapeutic environments is so close to some trainers' experiences, or so wide-spread within the system, or the topic induces so much shame and fear, that therapeutic practitioners in any role, just find it too emotionally difficult to talk about? As Koocher said, "How can the extant population of psychotherapists be expected to adequately address [these issues] if we pay so little attention to training in these matters?" (cited in Pope and Vasquez, 1998, p. 173). Equally, it could be asked, how can client-group members be expected to adequately address these issues between themselves, if their fee-charging therapeutic trainers and group leaders cannot.

A second condition of possibility for why silence exists around sexual relations occurring between group members may be related to practitioner negligence, a term that is not commonly discussed in literature. A number of authors have noted that group work comes with increased risks for clients and practitioners (Corey, 2008; Corey, Corey & Callanan, 2008, Ludbrook, 2003; Wheeler and Bertram, 2008). For clients of service, there is the increased risk that their emotional and psychological state, triggered by the intensity of group process, and the interactions or issues within the group, might be missed by the group leader. This is more of a risk given that the practitioner-group leader is now responsible for not just one client but possibly responsible for 12 to 14 clients at any one time.

Ludbrook, a New Zealand commentator (2003, p. 74) acknowledged that there could well have been cases where clients in therapeutic group settings may well have suffered as a result of negligent practice. "Clients have suffered psychological or psychiatric problems which they have attributed to the trauma of taking part in psychodrama, group therapy or

sexual dysfunction counselling.” It seems that there have been incidents where clients of service have defined their own experiences, noting their distress or trauma has been caused by their participation in some group work environments. One might suggest that being traumatised, as opposed to being challenged, was not the purpose of a client paying for, or attending, such a workshop.

It is accepted that during and after some therapeutic group work a certain level of distress may be expected. However, it cannot be assumed that *all* distress experienced by a client in or after therapeutic engagement is attributable solely to her or his underlying and unresolved personal issues. This may be one condition of possibility for why sexual relations between group members have not been framed as a safety issue for clients of service. It may well involve investigating therapeutic practitioner negligence. While based upon the American situation, Corey (2008, p. 64) noted: “If a group member can prove that personal injury or psychological harm was caused by a leader’s failure to render proper service, either through negligence or ignorance, the leader is open to a malpractice suit.”¹¹ It is tenable that therapeutic practitioners may not wish to frame a client of service’s subsequent traumatic feelings, resulting from sexual relations with a group member, as possibly being attributable to their own negligent practice. Given that the world view of the rational practitioner-expert is likely to carry more status than the world view of a distraught client of service or family member, it may be difficult for the latter to immediately pursue such an idea.

The third condition of possibility for why sexual relations have remained unaddressed by therapeutic associations may be because therapeutic practitioners, after the event, have framed clients’ behaviour as the problem, or the family as the problem and more therapy (with them) as the solution. The client’s emotional distress, or the distress of the family, may never have been framed by therapeutic experts as being: a) connected to a lack of safety guidelines from therapeutic practitioners at the beginning of group work; and/or b) as the result of negligent standards of care for client-group members whilst in group therapeutic environments. It is unlikely that the problem has been framed as (c) an unaddressed historical issue that belongs to the therapeutic disciplines. It is more likely that the problem will be framed as ‘the client’ or ‘the family’. The problem, if one is not careful, becomes owned and internalized by those who are experiencing emotional distress. This may be a significant change in the rules of the discursive formation. A modification of the principle of exclusion may be if a client of service or family member suggests the

¹¹ The following chapter will look at legal difference between New Zealand and other countries with regards to the possibility for suing for therapeutic practitioner negligence.

problem belongs with, at least for a significant level, with the therapeutic practitioner or the therapeutic profession.

Whatever conditions of possibility are debated, it is conceivable that clients of service have the right to be protected from sexual harm or trauma when participating in a group therapeutic environment. Equally, it seems feasible to suggest that it is the duty of fee-charging therapeutic practitioners to set standards of practice in this regard. It is practitioners' responsibility to ensure clients of service receive the appropriate professional standards of care whilst being in emotionally intense and emotionally vulnerable, and at times, physically isolated, therapeutic environments.

Dependency and the 'at times' autonomous client

The second anomaly centres round the need for clients of service to be dependent upon the therapeutic practitioner while therapeutic discourse also talks of the autonomous client. ANZPA's Code of Ethics has as one of its core values client autonomy: "Each client is unique and is able to make decisions and take charge of their own life. This means that members will foster autonomy in clients by applying the principles of free choice and informed consent" (2009, p. 3). Similarly, the New Zealand Association of Counsellors note that autonomy is one of its six core values of counselling (2009, p. 2).

Given the value of the autonomous client, why has there been a perceived need to have ethical standards that prohibit consenting sexual relations between a client of service and a therapeutic practitioner? Some therapeutic practitioners have attempted to suggest that there should be no such ethical standards as clients are capable of making their own decisions. However, according to Pope and Vazques (1998) such rationalizations have been used to minimize their own unethical, sexually exploitative behaviour. It seems to be more readily accepted that the 'autonomous client' is no longer a valid excuse for a therapeutic practitioner's sexual behaviour. This is supported by findings in various registration boards and court decisions, both in New Zealand and overseas, as chapter eight will show. The theoretical concept of the autonomous client is not a defence against therapeutic sexual exploitation.

The argument mitigating client autonomy in therapeutic situations is, in part, due to the notion of dependency or trust a client is asked to place in an expert practitioner. There are two ideas attached to this. Firstly, clients of service are seeking professional expert advice, so to some degree clients of service are being asked to trust in the professional's expert opinion so that they can gain from the therapeutic encounter. Secondly, clients of

service are asked to depend upon, that is to trust, that in opening up to their emotional vulnerabilities and sharing them with the therapeutic practitioner, he or she will not exploit such vulnerability and, intentionally or unintentionally, cause harm to the client whilst they are in a vulnerable state.

There are now many documented cases where therapeutic practitioners have exploited the power that their expert opinion brings, and the dependency and trust clients have placed in them. This has occurred when therapeutic practitioners have advised clients to have sexual relations with them because it will in some way assist them therapeutically (Pope & Vasquez, 1998; Hills, 2003). In the United States this type of abuse of trust is seen as the most abhorrent and carries with it, if found guilty, a term of imprisonment (Wheeler and Bertram, 2008). In New Zealand, as the following chapter will show, therapeutic practitioners who suggest sexual behaviour is a therapeutic technique will possibly be taken to court via the Director of Proceedings, and if found guilty, will be required to pay large sums of money to ex-clients and their partners for abusing their position of power in this manner (Director of Proceedings v Mogridge (2007)).

It might be argued that sexual relations occurring between client-group members is a different situation. Client-group members are not offering each other any expert opinion and nor are they bound by a professional duty of care not to sexually exploit each other. In this sense then their ability to act autonomously has not been compromised. Nonetheless, the trust in expert advice of their therapeutic practitioner is still present for clients working in group situations. It could even be argued that it is more influential within a group culture. If a therapeutic practitioner advises client-group members to explore their sexual or romantic desires with each other, because this will be therapeutically beneficial, are client-group members any less likely than individual-clients to trust the therapeutic practitioner's expert opinion?

Temerlin and Termerlin's (1982) research into therapeutic group functioning supports this proposition. Their research suggested that some training institutes more closely resembled religious cults than learning centres. Temerlin and Temerlin (1982, p. 139) stated:

One can observe a cult mentality in many therapists – humanistic, experiential or psychoanalytic – who do not live or practice within a cult, but who nonetheless accept uncritically the teachings of an idealized therapist, ignore other approaches (and the lack of evidence for the effectiveness of their own)

and treat all patients with the same therapy. Though psychotherapy cult membership may be rare, psychotherapy cult mentality may be widespread.

If one accepts these findings, this research would support the contention that the power of the therapeutic practitioner's expert opinion may be even stronger in group environments, particularly in therapeutic groups or communities where there is a cult-like mentality operating.

Pepper (2000, 2007) also raised concerns over the way therapeutic groups can actually become like incestuous families, scape-goating group members who dare to speak out about the practitioner's or the group's unethical behaviour. Clients in therapeutic groups, just like individual-clients, can still fear being abandoned or rejected by the therapeutic practitioner in whom they have placed trust in, if they speak out. Clients of service in therapeutic groups who also belong to a therapeutic community may have the increased fear of being abandoned or rejected not only by the therapeutic practitioner, but also by the therapeutic group or community to which they have belonged, to which they have relied upon for many years. Other group members, like family members being confronted with the realities of incest, may seek to disown, appease, chastise or threaten the family member who is seen as threatening the family's stability.

One condition of possibility for why sexual relations between client-group members appear not to have deemed as unsafe, unethical and sexually exploitative may be because client-client relations have been framed by therapeutic professionals as being unaffected by professional power relations. Yet, as has been demonstrated above, this is not necessarily the case. The power of the practitioner's advice, the power of the group culture, could very well impact upon the 'autonomous' client. If practitioner-group leaders are actively encouraging, or allowing, sexual exploration between client-group members one might well ask if the previous discourse, which suggested that sexual relations are an accepted part of therapy, has in fact ever gone away. Has it just been re-located in another setting, disconnecting the power and influence of the professional to the material effects experienced by clients and families? It is one possibility.

Transference and the 'at times' autonomous client

Within the discourse on therapeutic sexual exploitation there is also another anomaly that centres on the 'at times' autonomous client. As has been seen by exploring the history of therapeutic sexual exploitation and amendments to Codes of Ethics, the autonomous client argument can no longer be used a defence for therapeutic practitioner sexual

exploitation. If clients of service were seen as autonomous then there would be reason to have ethical standards on such issues (Russell, 1993, Wheeler & Bertram, 2008). Exceptions to seeing clients of service as autonomous can be connected to the issue of transference and counter-transference, terms created by Freud, which many see as integral aspects to therapeutic work. Yet, when exploring the safety and ethical issue of client-group members having sexual relations within therapeutic environments it seems matters of transference are not given the same weight.

The scientifically created term, transference, as previously discussed, was created by Freud in 1915 to explain the commonly observed sexualised and romanticised feelings between clients and therapeutic practitioners. Ladson and Welton (2004) described transference as the unconscious feelings that are transposed onto another individual. It is more commonly accepted that such projections occur throughout life and within all relationships, but that within therapeutic environments transference is often encouraged, intensified and, if effectively worked through, will be an opportunity for client insight. In a therapeutic sense, transference has been explained as a process whereby the brain can make sense of a current experience by seeing the past in the present. In the process of transference, the person stays focussed on the immediate situation or relationship so as to limit their brain's connection to previous, often painful events (Ladson & Welton, 2004).

With regards to sexual transference within the therapeutic relationship it has been suggested that there are two categories: 1) erotic transference where the client is aware of any sexual feelings he or she may have towards their therapist and has some insight into the nature of the transference; 2) eroticized transference, on the other hand, is intense, vivid and unconscious and the client has no insight into their own sexualised behaviour. In either case, the practitioner's responsibility is to work respectfully and safely with the client's sexual feelings or behaviours, encouraging new levels of insight for the client whilst ensuring that as practitioners they do not breach any professional boundaries or exploit the client's emotionally vulnerable state for their own needs (Ladson & Welton, 2004).

For this reason courts and registration boards have rejected practitioner arguments that clients freely initiated or consented to sexual or romantic contact with them (Wheeler and Bertram, 2008). Instead it is more commonly understood that clients within therapeutic environments may be 'acting out' transference issues, including transference issues of a sexual nature, in some hope of understanding their behaviour. In this sense the scientific discourse has developed that suggests clients of service, who are acting under transference,

are not acting autonomously. Instead, clients of service are seeking from their therapeutic practitioner insight, guidance, sensitivity and care, not sex.

Given this line of reasoning, it might be argued that sexual relations between client-group members does not carry transference concerns and therefore, on these grounds, client-group members must be seen to be acting autonomously if they engage with sexual relations with each other. However, Corey (2008, p. 128) extended the notion of transference. He identified another form of transference and counter transference that exists when working with groups - multiple transferences.

Group therapy also offers the possibility of multiple transferences. In individual therapy, client's projections are directed towards the therapist alone; in group therapy, they are also directed towards other members. The group constellation lends itself to multiple transferences that provide for re-enacting past unfinished events, especially when other members stimulate such intense feelings in an individual that he or she 'sees' in them some significant figure

If one accepts the notion that multiple-transferences can operate within a group environment then one condition of possibility might be that such eroticised transferences might occur between client-group members. This raises the issue as to who is expected to be responsible for identifying client-group members' behaviours when they are acting out transference issues. Who is responsible for ensuring that client-group members are not harmed from such occurrences? Has the therapeutic practitioner's responsibility, as the fee-charging therapeutic expert, to ensure client-group safety, somehow become reduced under the banner of 'shared' responsibility? If this was the case, this would have the effect of shifting the onus of care from therapeutic practitioner to other fee-paying client-group members who might also be in highly emotional states, and who are acting out their own transference issues. Certainly if there are increased risks of sexual transferences occurring between client-group members this would be a matter to be discussed when gaining an autonomous client's informed consent to participate in therapeutic group environments. One would also think that this might feature as necessary information for trainees, both prior to enrolment, and as part of standard training practice.

Therefore, it is suggested that one condition of possibility why sexual relations between clients of service has not been framed as unsafe, unethical or sexually exploitative behaviour is because client-group members have been defined as being able to function as autonomous clients of service, unaffected by the process of transference. To suggest

otherwise, would again pose questions as to who is responsible for ensuring such client transferences are seen and worked through with care and sensitivity. Perhaps there has been reluctance amongst therapeutic practitioners to consider that client-group members who may have acted out their sexual transferences did so due to practitioner negligence.

Gabbard and Peltz (as cited in Sarker, 2004) have argued that the incidents of therapeutic trainers sexually exploiting therapeutic trainees, has created institutional sexual exploitation and it has had the effect of ‘poisoning the well’ for future generations of therapeutic practitioners. Research (Pope et al, Goodwin, cited in Sarker, 2004) suggested that some therapeutic practitioners who had sexually exploited their clients were sexually exploited as trainees. It may be that the extent of sexually exploitative therapeutic behaviour has somehow been hidden or absorbed through Codes of Ethics, rather than named, addressed and researched by the therapeutic professions. Sarker suggested that, “psychotherapists as professionals (perhaps rivalled only by the clergy) remain at the forefront of violations of a serious kind” (2004, p. 318). The occurrence of therapeutic sexual exploitation at every level of practice might be one condition of possibility why there is reluctance for therapeutic professionals to take responsibility for naming this issue. The discourse might change. Sexual relations within therapeutic environments might be labelled as a systemic professional problem rather than an internalized, individualised problem for the client and his or her family.

Perhaps one might suggest that what is required now is a new ethical standard in Codes of Ethics which explicitly state that practitioners must take reasonable steps to ensure that clients are not harmed sexually in **any** therapeutic environment, including group environments. However, to suggest this now would be to fall into the very pattern Foucault’s methodologies were trying to challenge. A new ethical standard may just create more linear causality and narratives of progress and be used by psy-professions as an example of their own rational evolution, but which will still continue to mask historical practices, silence subjugated voices and obscure material effects (Hook, 2007).

Foucault’s methodologies require a different way of thinking about such matters, and this is not to discredit that there is a place for ethical standards, regulations, statutes and courts. Foucault’s methodologies, his theories about knowledge-power, are more complex than tinkering with institutional documents. Foucault was interested not only in examining what power-knowledge represses and restricts, but also what power-knowledge produces. Those interested in Foucault’s ideas might ask what has been produced by the current discourse around sexual relations in therapeutic environments, because power relations are

not just top-down arrangements. Power relations are much more complex than that (Hook, 2007).

The unstated price to pay behind the discourse of transference

The fourth anomaly asks, in my opinion, the most challenging question. If counter transference is accepted as a social construction that can no longer be used to excuse the sexualised behaviours of therapeutic practitioners, what does one make of transference. Is it logical that transference, as a social construction, can be used to explain the sexualised behaviours of clients of service – whether they are individual clients or clients in group settings? In asking such questions it is *not* the intention to remove accountability from therapeutic practitioners for their negligent or sexually exploitative behaviour with clients of service. A professional abuse of trust cannot be excused. The intention of asking such a question is to understand, at a deeper level, what is produced for clients of service, for society, when there is a dominant discourse which suggests that clients of service cannot be held accountable for their own behaviours because they were under the influence of transference.

One condition of possibility may be that in accepting such a discourse clients of service are inadvertently placing themselves back into a dependency-sickness model, accepting that they could not have done anything differently given their unresolved personal transference issues. Clients of service may be inadvertently supporting the idea that something is actually fundamentally, psychologically wrong with them. Interestingly, academic discourse has often claimed that one of the supposedly negative effects of therapeutic sexual exploitation is that clients of service were unlikely to feel safe to return to therapy. This was considered especially dangerous given that clients could well be in heightened and emotionally vulnerable states (Russell, 1993, Sarker, 2004; Syme, 2003). Yet this discourse suggests that clients of service are going to need more therapy to ‘get better’. The discourse is not that they do not need therapy, or that perhaps they never needed therapy, or that their distressed feelings, while extremely unpleasant, are understandable. It is a discourse that suggests that clients of service, did need, and still do need, therapy.

I am not suggesting that such clients of service should not be, or would not be, feeling emotionally fragile and distrusting after being sexually exploited by their practitioner, or that they may feel like taking their own life, or the life of someone else. I am not suggesting that such clients of service may have unexplained experiences that are

frightening to them and to others. What is being suggested is that the discourse encourages the belief that people, clients, clients who have been sexually exploited in therapy, *need* professional help to heal, to get better, to improve; as if despairing is a symptom of their more deeper, more disturbing ‘psychological illness’. What is being produced when clients of service accept the framing that their sexualised behaviour was a condition of transference? Perhaps the weight of a so called scientific theory is producing a belief that people’s so called psychological makeup, or their soul, their condition, is, yet again, in need of expert therapeutic attention.

From another angle, if practitioners cannot use the created science of counter-transference to minimize their behaviours, can clients of service use the created scientific term of transference to minimize the choices they have made to have sexual relations with their therapeutic practitioner or fellow group member? It occurred to me when reading the types of feelings clients of service experience after therapeutic sexual exploitation, that perhaps these same symptoms might be common for partners and children? Perhaps partners and children also might be likely to experience: ambivalence, guilt, emptiness and loneliness, sexual confusion, impaired ability to trust, identify and boundary confusion, emotional lability, rage, increased suicide risk and cognitive dysfunction, when a family member, as a client of service, has engaged in a sexualised or romanticised relationship in the private and confidential settings of therapy.¹² Has transference been used as an excuse for confronting one’s own shameful feelings of having abused the trust of others?

Conclusion

In the reported case of Centrepont, the ethical and legal responsibilities of Mr Potter to have provided a safe therapeutic environment for this woman, and her husband, do not appear to have been discussed. As outlined above, this may have been because there was a set of power relations which marginalised her voice, and the voice of her husband. Nonetheless, the husband, as it history tells us, was right to have been concerned, not only for himself and his wife, but for others also. It is shameful that the New Zealand Police did not properly investigate such claims, which resulted in more children, and no doubt more adults, being sexually and psychologically harmed under the name of therapy. As the initial Police Officer reported “what upset me the most was it meant that offending against children that could have stopped at the outset was allowed to continue” (Hume, 2009, p. A4). It may have also been that vulnerable and trusting clients of service, and their

¹² It is noted on the TELL website (therapyabuse.org) that partners of clients of service are sharing their painful experiences as a result of therapeutic sexual exploitation.

families, continued to be unnecessarily traumatised because 'responsible authorities' who were contacted, actively chose not to undertake their duties to investigate such concerns in a professional and thorough manner.

With that noted, it does bring into question, however, the discourse which has relied upon transference and counter transference as being an apparent bona fide scientific reason for why sexual relations can occur in therapeutic environments, as if that can minimise responsibility for the pain caused to others, like family members. As yet, it seems the scientific literature is silence on the effects such events have on families. Are family members supposed to understand therapeutic sexual relations - as a process of transference and counter-transference? However, if therapeutic practitioners could not rely on counter transference as a ethical or professional defence to sexual relations with a client, can transference be relied upon as an excuse for the breach of trust clients of service have shown their families?

Perhaps the discourse around transference and counter transference has ensured clients of service never get seen as truly autonomous, but instead they are always seen in need of therapeutic assistance. In suggesting this, I do recognise that therapeutic group environments are not like other normal every-day life environments. In the course of one's normal daily activities, one is not going to open up to the depths of their emotional pain. One is unlikely to share their most painful or shameful experiences with strangers. Instead, clients of service believe in some degree, one assumes, that to engage with the therapeutic experience will be beneficial to them in their personal lives and relationships. Being emotionally vulnerable in a safe therapeutic environment is supposed to assist clients of service to 'heal' in some way. That is the discourse. To suggest that clients of service may not now, and may never have needed therapy to heal is a more significant shift in the dominant Western discourse around mental illness and mental health.

Chapter Eight: The Application and Division of Disciplinary Power

Complaint Processes and Court Procedures

Introduction

One of the key features underpinning Foucault's historical research methodologies is the requirement to move between textual analyses to the material effects of a given discourse (Hook, 2007). The last three chapters have focussed on the academic discourse on therapeutic sexual exploitation, both in New Zealand and overseas. This chapter, however, like chapter three's exploration into mental health treatments in New Zealand, is moving outside the formal or academic discourse on therapeutic sexual exploitation. This chapter is exploring the material effects of this discourse by investigating the disciplinary procedures for therapeutic practitioners who have breached their ethical standards and sexually exploited their clients of service. While the primary focus is on New Zealand's experience in this regard, an appreciation of international influences is useful. An international comparison will highlight how discourse is socially and politically constructed at a national and international level, and the details of this broader analysis will be located in Appendix Four. This type of approach will illustrate the theoretical feature that knowledge-power is understood and conveyed through a discursive formation – not just through academic discourse. This applies to the discursive domain of therapeutic sexual exploitation.

The methodological principle of Foucault's that is employed in this chapter the principle of specificity. The primary purpose of the principle of specificity is to understand how punitive methods are being employed, not just in one situation, but more as a general means, as a more obscured form of discipline, across a given society. Foucault advised one to:

analyze punitive methods not simply as a consequence of legislation or as indicators of social structures, but as techniques possessing their specificity in the more general field of other ways of exercising power. Regard punishment as a political act (cited in Scheurich and McKenzie, 2005, p. 845).

This chapter, therefore, will be exploring how formal disciplinary bodies, such as complaint processes and court procedures have used their disciplinary power in the area of therapeutic sexual exploitation. Punitive methods operating within one institution or discipline, as in this case, are not to be seen as an original, stand-alone response, but more as part of a regular response to how society is using punishment and control.

To achieve this task the chapter is divided into three main sections: complaint processes, criminal law and common law procedures. Each section will explore how each of these disciplinary procedures has been using their power in the field of therapeutic sexual exploitation. At the conclusion of each main section, an analysis will be provided as to the material effects this broader discursive formation has on New Zealand's discursive formation on therapeutic sexual exploitation.

Section One: Complaint Processes and Licensure Boards as a Means of Discipline

It needs to be noted at the outset of this section is that there is one significant difference between the United States, Great Britain and New Zealand. In 48 States within the United States, to legally practice counselling and psychotherapy one needs to be professionally registered (Wheeler & Bertram, 2008). The implication of this is that if a therapeutic practitioner was found to have seriously breached their professional ethical standards they could be de-registered, and therefore, they would legally not be able to practice in that professional role again. In Great Britain, the therapeutic professions are not registered, consequently, there can be no de-registration (Jenkins, 2007). Regardless if a therapeutic practitioner has grossly breached their professions ethical standards, legally nothing prevents that person from using the title of counsellor or psychotherapist in the course of their paid work. In New Zealand, there is an anomaly. Since 2007 psychotherapy has been a registered profession under the Health Practitioners Competence Assurance Act (2003), however, counselling is not. It may well be that in time the profession of counselling also becomes a registered profession under the Health Practitioners Competence Assurance Act (2003).

The other point that needs to be noted, by way of introduction, is that Foucault's methodologies require an historical perspective (Scheurich & McKenzie, 2005). However, to undertake a strongly historical investigation into these areas sits outside the scope of this dissertation. The majority of this chapter, therefore, is limited to more contemporary times and has had to rely on texts that have had a combined interest in law, therapeutic ethics, and/or therapeutic sexual exploitation. To find texts that joined all three areas together for comment was difficult. The few texts that did combine an interest in law and therapy were usually written by therapeutic practitioners for therapeutic practitioners. I did not find any literature that discussed law, therapy and therapeutic sexual exploitation written by ex-clients for ex-clients. So, it is noted at the outset that the majority of the material

relied upon for this chapter is drawn from sources that have emanated from within the therapeutic disciplines themselves.

Legal-therapeutic texts were sparse, for New Zealand, the United States and Great Britain. No texts were found that addressed New Zealand psychotherapy and the law. *New Zealand Counselling and the Law* (Ludbrook, 2003) was the only text dedicated to addressing counselling and the law, from a New Zealand perspective. Two earlier articles were located which mentioned Codes of Ethics and the law (Winslade & White, 2002; Woodfield, 1982). They shall be discussed first before undertaking a closer examination of Ludbrook, (2003) and the more immediate situation within New Zealand. After this, commentary will be provided about New Zealand psychotherapy and the law. More detailed commentary about overseas experiences can be seen in Appendix 4a.

New Zealand Counselling

Woodfield (1982, p. 7) began his article with “For our own protection, it is important that as school guidance counsellors we have a good understanding of the laws under which we must operate.” While written in 1982, Woodfield stated that gaining such an understanding between counselling and the law was difficult. This was due to a) there was no New Zealand based case law relating to counsellors and b) the term counsellor was not statutorily defined, and had only been mentioned in a generic type of way in legislation. The article raised various ethical and legal dilemmas but did not address sexual exploitation in therapeutic environments. Perhaps, in 1982, to publically suggest that a New Zealand teacher-counsellor might sexually exploit a teenager during the course of their work might have been too shocking. He did, though, include a quote from Eberlein, dated in 1977, which acknowledged that in the United States many clients had sued psychologists for sexual abuse. This quote also made reference to the fact that overseas clients of service had claimed for damages as a result of physical injury incurred as a result of group therapy. However, Woodfield (1982) concluded by suggesting that civil claims of this kind in New Zealand would be:

unlikely to be brought because any effects constituting ‘personal injury by accident’ in terms of the Accident Compensation Act (and that concept is very widely defined to include nervous shock and mental consequences) cannot be the subject of a private claim for damages (Woodfield, 1982, p. 9).

This article does allude to an early awareness in New Zealand of legal accountability issues, ethical issues of sexual abuse in therapeutic environments and to the significance of

ACC legislation providing legal protection for therapeutic practitioners, a matter which will be subsequently be addressed later in this chapter.

In the second article Winslade and White (2002) offered an analysis of ethical complaints received by the New Zealand Association of Counsellors between 1991 and 2000. This useful study revealed that 98 complaints had been considered during this period by the Ethics committee, and of those, 20% of all complaints received had been addressed through either mediation or a hearing. Of the 98 complaints received 10 complaints related to sex with a client, six related to inappropriate touch, six related to an inappropriate relationship (although they did not distinguishing between sexual or non-sexual relationship), three related to sexual harassment/sexual talk. Of the thirty-three complaint categories identified, sex with a client featured as the fifth most common complaint made. If one combined all of the *sexually related* complaints together, possibly up to 25% of all complaints received were of a sexual nature.¹³ When organised in this way, complaints of a *sexual nature* were the highest number of complaints received by NZAC during this period.

It was interesting to note that of the 33 categories of complaints presented by the authors, sex with a client (totalling 10 complaints) was the only category broken down into detail. None of those 10 therapeutic practitioners complained about were expelled from NZAC. Closer analysis revealed that: two complaints were about non-members, two complainants withdrew their complaint, two complaints were sent to a panel but the panel decided that there was not enough evidence to begin a formal complaint process, one complaint was not upheld at hearing, one complaint was dealt through another organisation, and two complaints were upheld at a hearing. Of the two complaints upheld at a hearing, the counsellors' membership was downgraded and a series of other sanctions were put in place.

Winslade and White (2002) noted at the conclusion of their article that the sanctions used by the Ethics Committee had been at the lower end of the range of sanctions available to them – and that much use has been made of educative and supervisory processes to bring about changes in the counsellor's behaviour. What they did not comment on was how effective the complaints process had been from the complainants' point of view. The authors did not comment on how educative and supervisory sanctions against therapeutic

¹³ The authors note that there may be incidents where a number of categories were considered with one complaint, so it may be that in one complaint a client complained of sexual talk, sexual touch, inappropriate sexual relationship and sex with a client.

practitioners have been viewed by clients/victims of therapeutic sexual exploitation, their families or the community at large.

Ludbrook (2003) did not cover internal complaints procedures but he did cover issues of therapeutic sexual exploitation when addressing legal redress at civil law. Others have, however commented about the lack of professional counsellor registration. Concerns about counselling being an unregistered professional were expressed through the media, with the then Member of Parliament, Mark Peck, being alarmed that there was no effective punishment for counsellors found guilty of breaches of ethics. “There is absolutely nothing to stop somebody setting up as a counsellor and you can be found guilty of all sorts of things and still be able to carry on as a counsellor” (Southland Times, 1997). This means, in cases of therapeutic sexual exploitation, a client of service can lay a complaint to NZAC. NZAC may investigate that complaint which may or may not result in a hearing. Even if the therapeutic practitioner was found to have sexually exploited his or her client, it may very well be that the therapeutic practitioner undergoes some sort of therapy or educative approach – or at the most extreme, have their membership downgraded or revoked from NZAC. It does not mean that the particular therapeutic practitioner can no longer practice as a counsellor. At this stage, with limited data, one can see how a certain form of therapeutic intervention has been used as a disciplinary method for offending therapeutic practitioners.

New Zealand Psychotherapy

Given in New Zealand that psychotherapy and counselling are now legally classified as two distinct therapeutic disciplines, the main difference between them is, that since 2007, psychotherapists could, in theory, be de-registered for gross breaches of professional standards. However, I have no data on whether this has actually occurred. What I could locate was some comments made by then acting Health and Disability Commissioner about the extent of complaints her Office had received against psychotherapists:

It is my experience (and complaints to my Office would support this view), that consumers are not well served by poorly trained and unsupervised people, many of whom practise in the mental health area. Although specific complaints to my Office are low*, the degree of harm can be profound (Thomas, 2005, p. 1).

While that is noteworthy, what is more out of the ordinary was the information contained in the footnote,

Two specific complaints were made about psychotherapists in the 2002/2003 year and none in 2003/2004 year. However, it should be noted that many psychotherapists are also registered psychologists and thus, complaints about these practitioners may be captured in the figures for this group (33 for the 2002/2003 year and 43 for the 2003/2004) (Thomas, 2005, p 1).

This footnote suggests complaints made against New Zealand psychotherapists at this level are either (a) extremely low compared to overseas statistics, which in itself is interesting, or (b) not well captured by complaint authorities, due to the fact that psychologists or psychiatrists can also practice psychotherapy. This would again support the view for the need of New Zealand based research so more robust data can be captured for both counsellors and psychotherapists, as compared to other psy-professionals. Currently, the HDC website does not list psychotherapy as not a profession that has received any complaints about the practices of its health practitioners (New Zealand Health and Disability Commission, n.d).

The Material Effects of Disciplinary Power: Complaint Processes and Licensure Boards

The material effects may be noted when discussing the issue of internal complaints processes and a lack of professional registration for therapeutic professions. Heatherington, (2000), like Russell (1993) raised the point that internal or closed systems of review may not be in the best interests of the client. “If people are allowed to police themselves it is tantamount for an invitation for them to please themselves” (Pilgram, cited in Heatherington, 2000, p. 18). Heatherington, (2000, p. 18) elaborated: “when any form of therapeutic abuse is evaluated within the confines of a culture of therapists, the danger is that it can serve to generate experts on the subject of abuse from the viewpoint from the [interests of professional body].” This is an illustration of Foucault’s notion about the circularity of production of knowledge-power (Scheurich & McKenzie, 2005). In effect, psy-professionals are seen as abuse experts determining what shall be considered abusive behaviour and as well as being considered the experts as to what shall constitute the appropriate form of correction/punishment for abusive behaviours, within their own ranks.

In recognising the contributions of Canguilhem, Foucault suggested that “whoever says history of discourse is also saying recursive method ... in the sense which successive transformations of this truthful discourse constantly produce reworkings in their own history” (as cited in Scheurich & McKenzie, 2005, p. 844). Any internal complaints procedures, including those addressing sexual exploitation within therapeutic

environments, may well run the risk of being too close, too insular to see connections between how their particular discourse which -

facilitates and endorses the emergence of certain relations of material power just as it justifies these effects after the facts. Similarly, material arrangements of power enable certain speaking rights and privileges, just as they lend material substantiation to what is spoken in discourse (Hook, 2007, p. 129).

It would be a significant task for a distressed client to challenge a) the speaking rights and privileges of therapeutic experts and b) the weight of scientific reason which supports such therapeutic experts, due to the recursive nature of knowledge-power.

The second point that can be noted is that New Zealand, by comparison to the United States and the United Kingdom, do not have established systems for collating and reporting practices on therapeutic sexual exploitation (Refer Appendix 4a). Such data, one would think, would not only be of value to the professions, but also to clients of service, their families, and the public at large. This would ensure, to some degree, transparency of professional practice. In the absence of such data, the issue of therapeutic sexual exploitation becomes invisible or marginalised, and has the danger of being framed as isolated experiences, rather than possibly being an issue that needs addressing by the professions.

Although referring to the American situation, Pope and Vasquez (1998) remarks are relevant here. In commenting on the abuse of power and breach of trust in cases of therapeutic sexual exploitation, the authors suggested that the rehabilitation of a therapeutic professional, while a worthy cause in and of itself should not be confused with the requirement of complaint committees to ensure a no-tolerance policy for abusive professional behaviour. By way of example, they argued that if a judge had accepted a bribe in the course of his or her professional work but had undergone some rehabilitative programme, he or she would still not be permitted back to the bench. If a teacher was found to have sexually abused children and had subsequently undergone some sort of rehabilitative programme, he or she would not be subsequently re-employed back into the classroom. Both professionals could continue to offer their services to law or to education but they would be prohibited from being appointed to similar positions of trust. That is the socially sanctioned punishment or consequence for their professional abusive behaviour. That does not preclude the possibility, or the desire, for someone to engage in rehabilitation/healing; but it ensures that the professional's rehabilitation is not the primary purpose of a complaints process.

This raises an interesting point: have the New Zealand counselling and psychotherapy professions, as disciplines that are interested on therapeutic rehabilitation, ignored or confused the role or value of punishment and consequence for abusive behaviours when it comes to dealing with their own? What message does this send to the professional community, to client-victims and their families, to the public at large? It would seem problematic if complaint processes have been using supervision or an educative approach as a secular safe-haven confessional for a professional who has sexually exploited his or her client. It would seem that complaint processes should be used to ensure accountability for professional standards. If a professional has been found to have breached their own ethical standards, then he or she surely would need to accept responsibility for his or her actions – and that comes with accepting responsibility for consequences connected to unethical, sexually exploitative behaviour.

Alternatively, such a focus on education and rehabilitation as part of punishment may be just the new form of punishment adopted by society in general. The professional concerned is not being judged on the act they committed/omitted; they are being judged on who they are. Perhaps counselling and psychotherapy, as institutions, like other institutions, are not so focussed on the punishing the offender for his actions, but on producing normative standards of behaviour for others, normative standards requiring self-reflection and self-monitoring of the soul (Scheurich & McKenzie, 2005). However, even with that point, there are those in society who go to prison for breaking the laws of the land, and in prison, they are offered the option of engaging in therapeutic self-reflection. Their participation in such therapeutic self-reflection is an influential factor in deciding their suitability for being released back into society. The material effects of disciplinary punishments of self-reflection and re-education¹⁴ are perhaps applied in different ways and for different people. Currently in New Zealand therapeutic practitioners will not have to face a term of incarceration to engage in their own therapeutic practices of self-reflection after sexually exploiting their client of service. They can attend to their self-reflection during or after their working hours. Clients of service, at the extreme end, can engage in their self-reflection processes whilst being depressed, medicated, or perhaps incarcerated in a psychiatric hospital. With the limited data available, it is suggested that in New Zealand, the material effects of disciplinary power in situations of therapeutic sexual exploitation, via internal complaint processes, can be experienced differently by clients of service and

¹⁴ Perhaps *re-education* is not the most appropriate word, given that it has been reported that therapeutic practitioners, as trainers, have often not been taught about such matters in training environments (Webb, 1999).

therapeutic practitioners. This is part of New Zealand's more obscure discursive framework on therapeutic sexual exploitation.

Section Two: Legislation as a Means of Discipline

As Hook (2007) noted it is important to make the connection between the material-to-textual and the textual-to-material. This section explores how the textual discourse on therapeutic sexual exploitation has been translated into the material, in this instance through legislation. It asks what sort of disciplinary measures may be enforced for breaches of professional ethical standards through statutory legal means. The first possibility in this regard, is through criminal sanctions. In looking at criminal sanctions, I share a similar view to that expressed by Pope and Vasquez (1998). What statute law may offer, through the criminalization of therapeutic sexual exploitation, is the validation of the client's profoundly painful experience of sexual exploitation within the supposedly safe environment of therapy. With the criminalization of therapeutic sexual exploitation a given society is stating that such sexually abusive behaviours are intolerable and unacceptable. As Pope and Vasquez (1998, p. 37) stated:

The underlying rationalisation for criminalization of the behaviour is that sexual contact between professional and patient threatens public safety and has been shown to be harmful. This legislation is designed to serve as a forceful strategy to reduce the incidence of sexual misconduct by psychotherapists.

Whether criminalization of sexual exploitation by practitioners will in fact reduce incidences of sexual misconduct by psy-professionals remains to be seen; but perhaps that should not be its purpose. Its purpose should be to support client-victims who have been sexually violated by those claiming to be experts in psychological healing. As Appendix 4b explains in detail, in the United States, in 16 States, it is an illegal offense for a therapeutic practitioner to have sexual relations with a client of service (Wheeler & Bertram, 2008).

New Zealand's situation is similar to Great Britain's situation where there are not specific statutes criminalizing therapeutic sexual exploitation (See Appendix 4b). When exploring the New Zealand Crimes Act 1961 it may be that section 128B, sexual violation, might apply although the courts would have to consider the issue of consent in such matters (refer Appendix Five). The primary issue here would be that sexual exploitation within therapeutic environments does not usually involve physical force but nor have New Zealand complaint processes and tribunals been willing to describe sexual relations between a therapeutic practitioner and client of service as 'consensual' sexual relations

(see HDC findings: 07HDC03930, 02HDC11760, 08HDC17394; New Zealand Health and Disability Commission, n.d).

Perhaps it may be argued that section 128B of the Crimes Act 1961 might apply if it could be shown that under section 128A of the Crimes Act that even though the client allowed sexual activity she or he did not freely consent to it (refer Appendix Five). Under section 128A of the Crimes Act a list of possible scenarios are provided which suggest that although a person *allowed* sexual activity that is not the same as *consenting* to sexual activity, for example, being under the influence of drugs or being intellectually impaired. In these situations, it can be argued that the person was sexually violated. Currently, there is no specific exception under section 128A which suggests that while a client of service might have allowed sexual relations to occur in a therapeutic environment, a client might not have *consented* to sexual relations due to the influence of transference, or emotional vulnerability encouraged by the therapeutic encounter (Crimes Act, 1961). It may be that in time, the issue of free consent in situations of therapeutic sexual exploitation is explored further (Refer Appendix Five).

Health and Disability Commission

There is another New Zealand Act that is influential in the area of therapeutic sexual exploitation, but it does not deal with criminal acts.¹⁵ The Health and Disability Commissioner Act (1994) was enacted to promote and protect the rights of consumers of health and disability services. It is mentioned in this section because the Commission has a statutory responsibility to hear health complaints and address unethical behaviour of health practitioners. Clients of therapeutic service come under this Act. The Commissioner has intimated that the term ‘client’ under the Act may well be defined to include clients as trainees, given the payment of fees and the level of emotional trust and psychological vulnerability often required in this therapeutic environment (Personal correspondence, New Zealand Health and Disability Commission, September, 2009). Appreciating the vulnerable nature of trainees and supervisees is in keeping with developments in national and international Codes of Ethics. It is also in keeping with others in the profession who have noted that it is difficult to distinguish at times between the nature and level of emotional vulnerability undertaken by clients in counselling groups and by trainees in some training groups (Moreno, 1962).

¹⁵ Human Rights Commission Act may be another avenue that a client of service might investigate

The Commission responds to complaints made which allege that a health practitioner has breached an aspect of the Health and Disability Services Consumers' Rights Code (The Code). For the purposes of this research, complaints about sexual exploitation against a health provider come under section 4.2 of The Code which states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards." As has been shown in chapter six, having sexual or romantic relations with a client (and in most cases, with trainees also) is considered unethical behaviour in therapeutic Codes of Ethical Practice. This statutorily established health complaints Commission should, in theory, offer some security to members of the public. However, upon further reading, it is interesting to note that of all complaints received by HDC, the Commissioner investigates less than 10 percent of them. In other instances, the Commissioner may use other means available to reach a resolution such as an educative approach, mediation or seek an apology (New Zealand Health and Disability Commission).

With those 10 per cent of complaints investigated, what powers does the Commissioner have in disciplining offending practitioners? The Commissioner can ask for an apology to be given to the client of service, he or she can suggest specific training or suggest implementing and reviewing systems to prevent further breaches. If there is a concern about a practitioner's competence, the Commissioner may *recommend* that the profession's registration authority, (if there is one) review that practitioner's status. However, in the most serious cases the Commissioner may refer the matter to the Director of Proceedings to see whether to bring disciplinary proceedings¹⁶. In effect, unless cases are referred and accepted by the Director of Proceedings, the Commission has little power other than to make a finding that ethical standards have been breached and to suggest possible courses of action (www.hdc.govt.nz, n.d.). Investigating only 10 percent of complaints made and having such a limited range of power to affect any disciplinary proceedings may be of some benefit to therapeutic practitioners; it is questionable whether it is of equal value to clients of service and their families.

However, the HDC website lists case notes dating back to 1997. Of the cases listed, 17 referred to inappropriate sexual relationships with a client of service and a health professional. Of those 17 cases listed, 10 cases are connected to psy-professionals sexually exploiting their clients or patients. Of those 10 cases, seven cases refer to counsellors and none refer to psychotherapists. This means, that on average, less than one complaint a year is formally investigated by HDC against counsellors or psychotherapists for sexual

¹⁶The Director of Proceedings can order for payment of damages for any form of loss, including pain caused by humiliation, loss of dignity, and injury to the complainant's feelings (Ludbrook, 2003).

misconduct¹⁷. HDC reported, in personal correspondence, that since 2006 they concluded three investigations against counsellors for having a relationship with a health consumer and HDC found those three health practitioners in breach of their Code of Ethics. Since July 2006, it was also reported that HDC did not investigate any complaints of this nature against psychotherapists (Personal correspondence, with New Zealand Health and Disability Commission, 2010).

This number is unlikely to be a reflection of the incidents of therapeutic sexual exploitation in New Zealand, because as Syme (2003) noted, most victims of sexual abuse do not even go the authorities to lay a complaint. Those who are considering making a complaint to HDC need to do so with the knowledge that 90% of all complaints made to HDC are not formally investigated. Most notably, though, New Zealand's complaints statistics on therapeutic sexual exploitation are significantly lower than those of the United States and Great Britain.

The Material Effects of Disciplinary Power through Legislation

It seems that New Zealand's criminal or statutory disciplinary powers to punish those therapeutic practitioners who sexually exploit their therapeutic clients of service are not as robust as the United States. There is no statute that makes it illegal for a therapeutic practitioner to have sexual relations with his or her client. If there was any confidence the Health and Disability Commissioner had a public watch dog role, or a punitive role, or any real effective power, this may be shaken.

Associate Law Professor Jo Manning questioned the effectiveness of the Health and Disability Commissioner's Office (Tougher HDC Line Needed, 2010). In the Commissioner's first year of office he investigated 40% of the 1338 complaints he received, compared with 7, 8, and 8 percent in 2007, 2008 and 2009 respectively. Over a ten year period while the numbers of complaints have increased, the numbers of investigations have dropped markedly. Ms Manning wondered whether in the drive to deal with complaints speedily some consumers were denied investigations. It was reported that the Commissioner himself stated that this may be a "reason why fewer consumers than providers were satisfied with the process" as indicated by a survey conducted by his Office (New Zealand Doctor, 2010). Manning suggested it was timely to review the effectiveness

¹⁷ In at least three reported cases of therapeutic sexual exploitation, when HDC has referred cases on to the Director of Proceedings, the Director has decided not to proceed to hearing (03HDC 06091; 07HDC 11760; 07HDC 03930: www.hdc.govt.nz).

of the Health and Disability Commissioner Office for offering justice to those adversely affected by health and disability providers.

It will be remembered that Foucault's principle of specificity asks one to consider how disciplinary power is being enforced, not in one isolated situation, but more as general trend within a given society. Mr Patterson, the then Commissioner of HDC, suggested the decreasing number of complaints investigated may be due to more 'low level options' such as mediation and advocacy - and presumably educative approach also (New Zealand Doctor, 2010). It seems that there is a desire, under statute law, to deal with professional breaches of ethical standards through 'low level options' as was the case with NZAC practices (Winslade & White, 2002). Without public access to quantitative data it is difficult to ascertain exactly how many complaints of sexual exploitation by practitioners may be dealt with in this 'low-level' manner. Without access to qualitative research it is difficult to know how many client-complainants – or therapeutic practitioners, actually engage with HDC recommendations. It would be interesting to know how many complainants receive a written apology, or attend, with the offending practitioner, a mediation or advocacy session. Nor is it clear how effective an educative approach is, as an isolated response, from the point of view of dealing with systemic issues. It seems, under this form of disciplinary power, New Zealand therapeutic practitioners who breach their own ethical standards of ethical sexual conduct, may experience being disciplined in quite a different manner from some clients of service who express their distress at having been sexually exploited.

Section Three: Common Law as a Means for Discipline

To be reminded, the purpose behind Foucault's genealogical method is to ask, how are the divisions of punishment being employed in a given domain (Foucault, 1980/1991b). This section asks, as the other two sections ask, how are the divisions of punishment in the domain of therapeutic sexual exploitation being employed. The third and final area to be explored in this dissertation, are the disciplinary procedures being applied at common law for those connected to therapeutic sexual exploitation. Common law, as opposed to statute law, refers to the processes whereby laws are interpreted, extended and reinterpreted through judgments in civil court cases. It is not dependant on a crime being committed against an act of parliament. Rather, courts can look at personal damages that have occurred under tort, contract or equity. As an example, Corey (2008) noted that civil cases can be brought against therapeutic practitioners leading a therapy group who fail to 'do

right’ or ‘actively do wrong’ and as a result a client suffers personal injury or psychological damage.

Common law findings from one country can be used to support arguments being used in courts in other jurisdictions. The relevance and weight of overseas common law will vary, however, depending upon a country’s closeness to the New Zealand’s constitutional make up. Commonwealth countries, such as England, Canada and Australia would carry more influence than case law developed in America. This is because America has a formal Constitution, and it is not a Commonwealth country. That is not to say that common law from America could not be referred to in arguing one’s case in a New Zealand court of law. Therefore, in this section it must be noted that while statute law in America has absolutely no bearing on the legal rights in New Zealand; it would not be totally accurate to say the same about American’s common law.

Any area of the law is complicated and common law is no exception. The complicated nature of the law is further extenuated for those of us who are not legal practitioners. Nonetheless, even with the complexities of the law that fall well out the scope of this dissertation, the following matters are offered for debate, at least in a general sense. One can reflect upon how common law, as a disciplinary agent that possesses disciplinary powers, has been used to influence the discursive framework on therapeutic sexual exploitation. Appendix 4c discusses some of the common law legal arguments that have developed in the United States and Great Britain. These legal details may seem unnecessary, or superfluous, to understanding New Zealand’s discursive formation on therapeutic sexual exploitation. However, they are not. As the following section will show, this has been one significant area of difference with New Zealand’s discursive framework on therapeutic sexual exploitation, compared to that of the United States. New Zealand clients of service have had their access to justice at common law denied, however, with the changing nature of New Zealand’s Accident Compensation legislation, overseas common law findings may become more relevant to therapeutic practitioners, clients of service and their families.

Hook (2007, p. 124) in writing about Foucault’s research methodologies suggested that,

Recovering subjugated voices does not occur under the auspices of confronting a great untruthfulness with the force of an indisputable truth. It occurs rather under the auspices of tracing discursive formations of power and control, by assembling a strategically organised ensemble of historical

knowledge that will be capable of opposition and of struggle against the coercion of a presiding discourse.

This section, as one part within the wider dissertation, seeks to understand New Zealand's discursive formation on therapeutic sexual exploitation by tracing the discursive formations of power – to make explicit how historical knowledge has been organised and controlled in the area of therapeutic sexual exploitation. The discourse which emanates from New Zealand's common law practice is part of that discursive formation that needs to be made explicit. New Zealand's experience, again, appears to be similar to the British experience with little known or readily cited case law on therapeutic sexual exploitation. However, as Appendix 4c illustrates, the United States (and Canada) have developed case law in this area, noting the special breach of trust in cases of therapeutic sexual exploitation. Given that this dissertation's focus is on New Zealand's discursive framework, this section will endeavour to understand how ACC legislation has affected, and will continue to affect, New Zealand's discursive framework on therapeutic sexual exploitation.

As stated earlier, Ludbrook (2003) appeared to be the only New Zealand based text that has been dedicated to addressing therapeutic-legal issues. The primary purpose of this text, as with other texts (Jenkins, 2007; Wheeler & Bertram, 2008) was to provide a resource for therapeutic practitioners on therapeutic-legal issues. The target audience was not clients of service. Ludbrook (2003) did discuss possible legal implications for New Zealand counsellors if they were engaged in sexual or romantic relations with a client. Ludbrook's more general comments about therapeutic sexual exploitation did not always reflect some of the more recent discourse, research findings or legal responses to this breach of ethical standards. He stated:

A further danger [of crossing professional boundaries] is that the emotional and sexual relationship may result in personal feelings getting in the way of the professional relationship, with resulting distraction from the purpose of counselling and sometimes [leading to] conflict between client and counsellor. The client (*or the counsellor*) may feel angry, rejected and let down. The counsellor may be accused of taking advantage of the counselling relationship for his or her own emotional or sexual gratification and exploiting the vulnerability and trust of the client (emphasis added, Ludbrook, 2003, p. 44).

He continued "If there develops an intensely emotional, romantic or sexual relationship between the counsellor and client and the client later feels betrayed or rejected he or she

might initiate some form of legal action against the counsellor” Ludbrook (Ibid, p. 47). This is an alternative discourse to suggesting that a client of service has a right to explore some form of legal action because the therapeutic practitioner is likely to have: 1) breached their professional ethical standards, and 2) breached their legal duty of care which is known to often cause significant harm to the clients of service and families.

Nonetheless, Ludbrook (2003) does refer to the fact that sexual relations can occur in therapeutic environments. At the time of writing, he summarised New Zealand’s legal position at common law: “a counselling client who suffers physical, psychological or emotional damage as a result of negligence of a counsellor or as a result of the intentional actions of a counsellor cannot sue for compensatory damages¹⁸” because of the restrictions imposed by ACC legislation (Ludbrook, 2003, p. 27).¹⁹ This would seem to bar any clients of therapeutic practice suing at common law for compensatory damages as a result of sexual relations within the therapeutic environment, whether that is seen as negligent or exploitative practice. However, since the time of publication, further amendments to ACC legislation have occurred thus making some of Ludbrook’s comments out of date. Before exploring some of these terminology changes, the background to ACC legislation will be discussed.

(i) *Background to ACC legislation*

Accident Compensation legislation first came into force in 1974. Its initial purpose was to provide a statutory scheme which 1) promoted safety by preventing accidents, 2) promoted the rehabilitation of injured people, and 3) provided compensation for the injured and for the dependents of certain people whose death resulted from injury. The injury could occur anywhere, for example at home, at work, on the road, or receiving a medical or health treatment. It was, and still is, framed as a no-fault compensatory scheme. Those claiming compensation did not have to prove negligence or fault by another person; they only had to prove damage caused through personal injury. The dominant discourse of the day also framed this compensation scheme as beneficial, and just, for another reason; it provided equal

¹⁸ ACC legislation has not barred client-plaintiff’s from suing for exemplary damages which are damages related more to punish for the defendant for abhorrent behaviour, rather than for suing for compensation for pain and loss incurred (Ludbrook, 2003; Todd, 1999). In *L v Robinson*, a psychiatrist was ordered to pay exemplary damages of \$60,000 for sexually exploiting his client (Todd, 2004).

¹⁹ Refer to Beck (2007, 2008); and Brown, (2007), to explore more recent New Zealand legal commentary about the Statue of Limitation and the Reasonable Discovery Test that can apply to cases of sexual abuse and exploitation.

access to compensation, without having to endure expensive court cases with no guarantee of a successful outcome (Todd, 2005).

The pay-off for introducing this publicly funded no-fault compensatory scheme was that members of society have been barred at common law for the right to sue for damages for personal injury (except for punitive or exemplary damages) as defined by the Act. It also had to be accepted that in exchange for a publically funded, non-adversarial process, no-fault compensation scheme, compensation payments would be significantly lower than if one was successful in a court of law. In essence, if one's claim could be treated under the ACC scheme then one was barred from seeking compensatory redress for accident of medical injury at common law. This is still applicable today.

Taking away an individual's right to justice and their right to sue at common law compensatory damages is a significant right to be removed through an act of parliament. The court process is one of New Zealand society's legitimate avenues for balancing power interests, ensuring justice and disciplining those who have breached socially sanctioned laws of the land. The consequences of removing this access to justice have been subject to much legal discussion (Todd, 2004). The effect of framing this legislation as a 'no-fault' compensation scheme means that in cases of therapeutic sexual exploitation clients of service have been legally prohibited from seeking justice in courts of law for compensatory damages. It also means that therapeutic practitioners, like other professionals, have been legally protected from negligence with a 'no-blame/no accountability' legislative compensation scheme. However, with recent changes to ACC legislation, it may be that such legal protection afforded to therapeutic practitioners may be tested.

(ii) *Recent changes to ACC legislation*

Moving to the present, the Accident Compensation Corporation Act is now called the Injury Prevention Rehabilitation and Compensation Act 2001 and it is the fifth major ACC Act in the nearly three decades. Three more recent changes in legislative terminology will be explored below, explaining why Ludbrook's (2003) earlier comments now need revisiting.

Section 32: Treatment injury from a registered health professional

Under new ACC provisions for a person to receive financial compensation from a therapeutic practitioner for negligence or harm a client-claimant would have to sustain a treatment injury from a *registered* health professional. Since 2007 this would apply to psychotherapists as they are now a registered profession under the Health Practitioners Competence Assurance Act. This does not currently apply to counsellors as they are currently not a registered health profession under this Act. Therefore, on these grounds alone, clients of counsellors who have been sexually exploited by their therapeutic practitioner can sue at common law for compensatory damages (Refer Appendix 6).

Section 26: Mental injury must result from a physical injury

Under more recent ACC terminology, if a client of service wishes to claim compensation for a mental injury as a result of sexual relations with a psychotherapist, a client would need to show mental injury resulted *from a physical injury*. Sexual exploitation that did not cause a physical injury would not come under the Act. Therefore, clients of counsellors can sue at common law – because counsellors are not registered health practitioners. Secondly, clients of psychotherapists could also sue at common law for compensatory damages if, as a result of sexual exploitation, they had a mental injury, that was **not** connected to a physical injury (Refer Appendix Six).

Section 27: Mental injury means a clinically significant behavioural, cognitive or psychological dysfunction.

This wording is a significant change from previous ACC legislation. The 1972 and 1982 Acts provided cover for people who suffered *physical or mental consequences as a result of the injury or accident*. In ACC v E (1992) it was held that ACC could provide compensation for those who received a mental injury even though no physical injury was sustained (Todd, 2004). Now, however, under the 2001 Act, mental injury has to be caused by a registered health practitioner; it has to be connected to the physical injury **and** it has to be *clinically* significant (Todd, 2005). Under the earlier legislation, mental consequences could include transient mental trauma such as anger, embarrassment, humiliation and distress as well as more standardised mental illness diagnoses. Now, however, to be eligible for

compensation under ACC a client would need to show a 'clinically significant psychological dysfunction' as a direct result of physical injury.

In the rare event that therapeutic sexual exploitation caused a physical injury which then resulted in a clinically significant mental injury - this would require clients of service to be diagnosed by another psy-professional, in the aim of being categorised as having a so-called significant mental dysfunction before they could access compensation under ACC legislation. If a client of service refused to be diagnosed in this manner, they would be denied compensation. This is another example of the circular nature, the interconnectedness of power-knowledge and its material effects. As Hook (2007, p. 129) wrote,

One needs only to briefly consider the complexity of the mutually beneficial and interdependent relationship of the material and the discursive in the operation of power to be aware that discourse often appears as both instrument and objective power, both its antecedent and its result.

What this quote is referring to is how the system of law and therapy, working together, have created the situation whereby a client of service who has been sexually abused in a therapeutic environment has to confess to having a significant mental dysfunction before he or she can be eligible for compensation can be granted. This raises the question, can a client of service be traumatised due to therapeutic sexual exploitation, (as the research suggests) and refuse to be framed as having a significant mental dysfunction?

The answer to this question is yes. Even in the unlikely event that a client of service (of a psychotherapist) received a mental injury which was in some way connected to a physical injury, the client of service could still sue at common law, if they experienced transient mental trauma (otherwise referred to as nervous shock under tort law). For all of the above reasons, and in light of legislative changes, it seems that Ludbrook's (2003) earlier claims that a counsellor cannot be sued for compensatory damages needs to be revisited.

While these legislative changes are important to note, what is more significant is that for many decades New Zealand clients of service have been denied access to New Zealand's justice system. They have been prohibited from directly seeking compensatory damages from therapeutic practitioners who have harmed them in a most profound way. They have been denied having their stories put on public record.

While there is no doubt some merit in ACC's scheme, it may be that this concept of justice also needs re-examination.

(iii) *An additional factor. Section 23 – ACC's exemption for sex crimes*

There is one additional factor that does need mentioning. Under current ACC legislation people who have been the victim/survivors of sexual crimes are eligible to claim for ACC compensation under section 23, without having to show a connection to any physical injury. Schedule Three of the Act, Cover for Mental Injury caused by certain criminal acts, itemises the sex crimes from the Crimes Act 1961 to which the ACC legislation will potentially cover (refer Appendix Six and Seven).

However, as it was discussed above under the statute section, there is no specific law that makes it a crime for a therapeutic practitioner to have sexual relations with his or her client. That is not to say, that perhaps it could be argued that consent was never freely given in such situations. Certainly, there is a growing case law which suggests *agreeing* to sexual relations within a therapeutic environment and *consenting* to sexual relations within a therapeutic environment, is not the same thing: (Director of Proceedings v Mogridge [2007]; L v Robinson [2000] as discussed by Ludbrook, 2003). This line of reasoning, and its application under the New Zealand Crimes Act, is perhaps worthy of exploration.

However, the advantages and disadvantages for placing sex crimes under 'no-fault, common law barred' ACC legislation needs close and careful examination. While acknowledging the re-traumatising effects of an adversarial court process on victim/survivors of sex crimes, one cannot assume a 'no-fault' compensation scheme, that denies the right for clients to sue for compensatory damages, is the best way of dealing with these sorts of crimes, or potential crimes either. Todd (2005) acknowledged this awkward anomaly within ACC legislation. He was referring to how victim-survivors of sexual abuse were attempting to gain monetary compensation via the courts, and given that they were barred for suing for compensatory damages, client-plaintiffs were attempting to argue their case for exemplary damages, instead. He suggested a new solution was needed to adequately address the needs of people who have been sexually abused, rather than contorting legislation to deal with sensitive issues in an adversarial legal process. In referring to the issue of exemplary damages Todd (2005, p. 53) stated:

Arguably the victims of criminal offending, and sex abuse victims in particular, were and possibly still are treated badly by the statutory scheme, but this has nothing to do with the award of exemplary damages. If there is still a problem then the solution surely lies in raising the level of benefits available under the statutory [ACC] scheme.

I would suggest that this would not be an appropriate solution to this legislative anomaly. Compensation for victim/survivors of sexual abuse or exploitation should not be placed in no-fault, no accountability legislative regimes which also prohibits the right to take civil action if one so wished. Additional alternatives need to be explored to rectify this unsatisfactory arrangement while not losing sight of the often re-traumatising effects of engaging in an adversarial legal process for victim/survivors of sexual crimes.²⁰

(iv) *Negligence and ACC: Sexual harm caused to client-group members in group therapeutic environments*

The final point to explore, relates to the discussions in the previous chapter on the issue of sexual harm caused to client-group members as a result of therapeutic practitioner negligence. Can therapeutic practitioners be sued for negligent practice that results in causing harm to clients of service? What if clients of service experienced sexual harm as a result of the therapeutic group experience? Would they be barred at common law for suing a therapeutic practitioner for negligence?

Ludbrook's (2003) contributions to this topic are useful, especially since it is a New Zealand text. In chapter 22, entitled 'Group Counselling, Family Counselling and Psychodrama', a number of risk factors were given that have been associated to the therapeutic group experience. The following list is a summary of the additional risk factors Ludbrook (2003) identified as being connected to therapeutic group work: Group pressures may mean that client-group members behave in ways that they might not normally; client-group members may be scape-goated by other client-group members; normal social barriers and constraints may be lifted, and, client-

²⁰ Currently, ACC is in the media for attempting to ensure that all sexual abuse claimants have to be diagnosed with a mental injury under DSM-IV to be eligible for treatment and/or compensation. This is being strongly challenged by many therapeutic practitioners, noting that sexual abuse survivors should not have to have diagnosed as having a 'mental injury' (Hume, 2010). However, the financial implications this might have for such therapeutic practitioners was not noted, nor it seems was the broader issue of placing sexual abuse claimants under a 'no fault' compensatory regime which takes away claimants right to sue at common law.

group members may be encouraged to ‘try something new’ and take risks that they would not normally contemplate. He also noted that there was proven risk that client-group members whose mental health has been fragile may become re-traumatised and develop, what is commonly called, psychosis. An additional point Ludbrook (2003) made is that the encouraging of physical expression of emotion may result in physical injury. He did not mention that the encouraging of sexual expression may also result in sexual harm, but arguably, it could be a possibility.

While not directly related to therapeutic group work, in a case heard by the New Zealand Health Practitioners Disciplinary Tribunal (Re. S. – 2008) a psychologist was charged with professional misconduct with a client who had a history of severe abuse – sexual, physical and psychological. The client had been previously diagnosed as having what is labelled post traumatic stress disorder (PTSD) and dissociative identity disorder (DID). For a number of reasons the defendant was found guilty of professional negligence. One reason centred round the psychologist’s use of (non-sexual) physical touch in psychotherapy sessions. It was accepted by the court that since the 1990s research suggested, and this was supported in DID guidelines, not to use physical touch with clients who presented with DID, including clients who had been sexually abused. The relevance of this case to the research question is that in New Zealand there exists legal support for the argument that therapeutic practitioners have to use appropriate methods of skill and care, to be informed on latest research findings when dealing with clients – sole clients or clients as group members. Clients of service left in vulnerable states due to negligent therapeutic practice may well find themselves more at risk – from themselves, and from other group-members and from the public at large.

Therefore, bearing in mind the above discussions to changes to ACC legislation, there now exists the strong possibility that therapeutic practitioners in New Zealand could be sued for negligence, if the therapeutic methods they employed did not cause physical harm, but caused psychological, emotional (and I would also include sexual harm) to client-group members – even if the harmful actions were conducted by another group member. It will be remembered that there is a growing international discourse that therapeutic practitioners have an ethical duty to take all reasonable steps to ensure client-group member’s safety. The test for the New Zealand courts, one would assume, would be to consider what might constitute reasonable practice in a specified group-therapeutic situation.

The Material Effects of Disciplinary Power: Common Law

Without a doubt, historical ACC legislation has been one condition of possibility that has influenced New Zealand's discursive formation on therapeutic sexual exploitation. Through legislative means, which is another form of disciplinary power, the rights of New Zealand clients of service to seek redress at common law for therapeutic sexual exploitation, or for sexual harm caused through therapeutic practitioner negligence, has been denied. This has, advertently or inadvertently, provided therapeutic practitioners with a significant degree of legal protection for negligent and/or therapeutic sexual exploitation. It seems to me it is questionable to frame this legal arrangement as a 'just' compensation system.

Furthermore, given that clients of therapeutic sexual exploitation have been historically 'squeezed' to take compensation through ACC, that has ensured that their personal stories are kept in the 'sensitive claims' division. The only question now to be asked is whose sensitivity is being protected – and at what cost? I contacted ACC directly and asked if they had a statistical breakdown on claims due to therapeutic sexual abuse and I was informed that they did not.

We don't have the information you are after. Because ACC is a no fault scheme we do not collect a lot of data on the cause of the claim, including the details that you are after here. Sorry we can't help (Personal correspondence, Kraiger, B. ACC, 28.6.2010).

This lack of empirical data, again, ensures that the extent of therapeutic sexual exploitation in New Zealand cannot be measured as an institutional or political issue, but rather it continually becomes located, through a variety of disciplinary means, as an individualized, private and personal problem that belongs to clients of service. Furthermore, this lack of empirical data, one would have thought, would make it difficult for ACC to target appropriate funding to preventative actions of commonly occurring 'accidents' or 'injuries'.

Nevertheless, with changes to ACC legislation over the last decade, it appears this form of professional protection may come under review. While I am not qualified in the law, it seems to me, at least on the face of it, that these recent changes might be one condition of possibility, but only one of many, to change power relations in the field of therapeutic sexual exploitation. Certainly, looking to the experiences of the United States, the political movements of ex-clients and ex-psychiatric patients have been closely connected with their ability to access justice through the courts. Clients of service, who

have experienced therapeutic sexual exploitation, need, however, in the first instance, to have *access* to a society's systems for justice and discipline. That, I would suggest, would be one 'reasonable step' to ensure client safety in the field of therapeutic sexual exploitation. To deny clients of service their rights at common law, is a political issue, and has been part of New Zealand's discursive formation on therapeutic sexual exploitation.

Conclusion

This chapter used Foucault's methodological principle of specificity to examine how disciplinary powers have been used to influence New Zealand's discursive formation on therapeutic sexual exploitation. However, the principle of specificity, which is connected to Foucault's genealogical method, is also interested in understanding how such isolated incidents of discipline are used and divided, and applied across society. Foucault suggested that one needs to examine whether such patterns of discipline are in fact, more regular, than specific.

This chapter has shown that for clients of service in New Zealand, the various disciplinary agents have not been overly willing to strongly discipline therapeutic practitioners who have breached their own ethical standards and sexually exploited their clients of service. Internal complaints appear to want to adopt a re-educative approach, external complaints procedures appear to value a 'low-level' approach to complaints received, with most complaints never being investigated. Even though both in New Zealand and overseas, through Codes of Ethics, there is recognition that in cases of therapeutic sexual exploitation, clients of service are often emotionally comprised, thus making informed consent to sexual relations questionable, it is not classed as a sex crime. The only disciplinary avenue left for clients of service, where they are more in control of the justice and disciplinary processes, is at common law. Yet, even this form of justice has been denied to New Zealand clients of service for decades due to ACC legislation. Instead clients of service are supposed to be placated that such a silencing of rights is made better by a 'no-fault' compensation scheme, as if a sense of justice can be delivered in that way.

On the other hand, some people in New Zealand have been incarcerated due to sexually exploiting the vulnerabilities of others, and while incarcerated, they have the opportunity to engage in the process of self-reflection. Those people are, nevertheless, still punished for sexually harming someone else. To some degree such punishment is also framed as a broader issue of public safety. It seems therapeutic practitioners who sexually

exploit their clients of service are not some of those people. Other people can be incarcerated in psychiatric hospitals because they are in so much pain due to, or exacerbated by, therapeutic sexual exploitation that they are deemed to be unsafe to themselves or others. While incarcerated in a psychiatric hospital, and must have 'treatment' and engage in the self-reflection process of who and what made they hurt.

One might wish to engage in self-reflection and ask if in New Zealand the knowledge-power of therapeutic self-reflection has been used in a humane and just way – or as a form of social control that is more obscured through those who have institutional power. Perhaps one might like to reflect if disciplinary power has been divided and applied in different ways and for different people. It is suggested that the application and division of disciplinary power has been a significant factor that has influenced New Zealand's discursive formation on therapeutic sexual exploitation. For some, it may have caused them to reflect about 'insanity in the age of reason'.

Chapter Nine: Implications

Introduction

In an interview Foucault (1980/1991b) was asked to comment on the fact that many social workers employed in prisons had reported feeling hopeless after reading *Discipline and Punish*, and they were left wondering whether they had any room for innovative work with prisoners. It was reported that the social workers felt disappointed that Foucault's writings did not tell them what to do and nor did his work provide answers to the questions he had raised. To this Foucault replied,

Those who work in the institutional setting of the prison – which is not quite the same as being in prison – are not likely to find advice or instructions in my books that tell them 'what is to be done'. But my project is precisely to bring it about that they 'no longer know what to do ... discourses which up until then had seemed to go without saying become problematic, difficult, dangerous... For me the problem of the prisons isn't one for the 'social workers' but one for the prisoners (Foucault, 1980/1991b, p. 84).

It seems that this is a significant point to grasp. At the conclusion of this dissertation I am of the opinion that those who work in the institutional settings of counselling and psychotherapy, who enjoy the privileges and social status of being an expert within this field, are not in the same position as those people who become clients of service or patients in hospitals. The problem of therapeutic sexual exploitation is not one for therapeutic practitioners; it is one for clients of service and their families. Foucault's methodologies are for those who have not had voice.

The fundamental task of this research assignment has been to make explicit the links between knowledge, power and silence within New Zealand's discursive formation on therapeutic sexual exploitation. That is the aim of Foucault's methodologies (Hook, 2007). It has been shown that these two therapeutic institutions cannot be assumed to be neutral or a-political. As separate or united political entities they are no more likely, or no less likely, than any other organisation or family to have systemic abusive practices. They are no more likely, or no less likely, than any other organisation or family to obscure sensitive material to maintain personal or professional viability. It is a possibility that in New Zealand the institutions of counselling and psychotherapy have been obscuring the nature, extent and impact of sexualised relations occurring within therapeutic environments. However, the ability to confidently discuss this ethical issue at a local level has been limited due to a

number of variables. However, what have been discussed in this dissertation are the patterns of discourse, the 'sayable' and 'unsayable' that has existed in New Zealand's discursive formation on therapeutic sexual exploitation.

With reference to the extra-discursive, in the form of overseas discourses on therapeutic sexual exploitation, it has become clear that sexual exploitation by therapeutic practitioners is one of the most significant areas of unethical practice by psy-professionals in the United States and Great Britain. Furthermore, it has been a professional ethical issue since the inception of therapeutic practice. With historical changes to overseas discursive patterns, and changes within power relations, scientific knowledge has more recently suggested that therapeutic sexual exploitation causes significant, and sometimes permanent, harm to clients of service and to their families. In studying the extra-discursive, it has been shown that New Zealand's discursive formation on therapeutic sexual exploitation has been selected and organised in a particular manner.

It seems it has been permissible in New Zealand to discuss codified ethical standards about therapeutic sexual relations. It appears it has not been permissible to teach about the issue of therapeutic sexual exploitation. It appears it has not been permissible to publically discuss *what have been* the nature, extent and impact of therapeutic sexual exploitation in New Zealand. This is the selective and political nature of knowledge-power, and it produces. In this instance, New Zealand's discursive formation has produced a silence; a silence on the history of therapeutic sexual exploitation in New Zealand, a silence from clients and their families affected by therapeutic sexual exploitation.

However, when it comes to the area of sexual relations occurring between client-group members it appears that New Zealand's silence sits within a more pronounced international silence. Foucault's methodological principle of discontinuity encourages one to examine anomalies and contradictions in discursive formations. Currently, scientific therapeutic knowledge suggests that therapeutic group leaders face additional professional responsibilities when running therapeutic groups. Therapeutic practitioners, as group leaders and trainers, are required to take reasonable steps for ensuring that *all* client-group members are not physically or psychologically harmed as a result of any therapeutic group process. Yet, the scientific discourse has excluded that possibility that client-group members can be sexually harmed within a therapeutic group environment. The possible implications of this silence are that client-group members and their families could assume that this has not occurred previously, or if it has, it has not been problematic. If it has been problematic, the problem may have framed and internalized as belonging to the distressed

individual client and their family. If that is the case, then the issue of therapeutic sexual exploitation is, indeed, a problem for clients of service and their families.

There are further implications for New Zealand based therapeutic associations, institutions and practitioners ensuring silence on therapeutic sexual exploitation at a local level. This form of knowledge-power may have produced a *culture* of silence, ignorance or naivety and an untouchable pressure not to speak publically about therapeutic sexual exploitation. Clients of service and their families, and the general New Zealand public, might be unaware or ill-informed on the issues relating to therapeutic sexual exploitation. For therapeutic practitioners this silence may have re-produced and secured their image as being professional experts in ‘sexual exploitation and healing’ while at the same time this silence may have obscured the nature and extent of sexual exploitation occurring within their own organisational family or community. This silence may have produced more income for therapeutic practitioners. Inadvertently, their connections with knowledge-power may have reinforced their own status as relationship experts that can assist clients of service with their troubled souls. For clients of service, knowledge-power may have produced a discursive formation which has suggested that their emotional pain due to therapeutic sexual relations is really a personal and private issue rather than one that belongs in the political and public domain.

Foucault’s combined research methodologies require any analysis on scientific discourse to include how technologies of disciplinary power may have been operating within a given field. It has been revealed that in New Zealand, clients of service and their families appear to have significant hurdles to cross if they wish to be assured that any offending therapeutic practitioner will be appropriately punished for breaching their own ethical standards of practice. In New Zealand, it is questionable whether internal and external complaints processes can provide assurance that there will be a fair and robust complaints process. Unlike the United States, there are no criminal sanctions in place to deter and/or punish those therapeutic professionals who sexually exploit their clients. Furthermore, access to common law remedies, which have been available in the United States, have been unavailable to New Zealand’s clients of service. Historically, clients of service in New Zealand have been barred access to the courts through ACC legislation. As a result of these disciplinary systems, clients of service have been required to be diagnosed and treated by a psy-professional before they can seek tax-payer compensation and apparent rehabilitation for the harm caused due therapeutic sexual exploitation. This has been one result of New Zealand’s ‘no-fault accident’ compensation scheme. Yet, these very same disciplinary processes have used supervision, therapeutic self-reflection and re-

education as an apparent disciplinary method for those who have breached their own therapeutic ethical standards and caused significant harm to clients of service and their families.

The type and level of disciplinary action seems inappropriate given the research findings which suggest that clients of service – and their families – can experience significant harm due to therapeutic sexual exploitation. For clients of service it seems it is not uncommon that they might experience significant emotional distress as a result of therapeutic sexual exploitation. In the worst case scenario they may be, against their will, hospitalized, drugged, electrocuted, secluded and therapatised. Alternatively, other clients of service who experience high levels of emotional distress due to therapeutic sexual exploitation may live at home and ‘by choice’ be drugged, secluded, therapatised, and harm self or others. One might argue that clients of service who express their distress due to therapeutic sexual exploitation are punished more severely than therapeutic practitioners who have harmed their clients of service.

What has been produced by these configurations of disciplinary power? For clients of service it might have produced further trauma and reinforced a belief that they have a mental disorder requiring professional therapeutic intervention. For clients of service it might have produced a belief that trying to seek adequate acknowledgement of harm caused due to abusive or negligent therapeutic practice is a difficult, perhaps even futile experience. For family members it may have produced a belief that they should carry the shame for ‘not being enough’ and they are, therefore, the part-owners of the problem, the pain of which can be worked through with more therapy. For therapeutic practitioners it might have produced the discourse that such professional errors can be seen as regrettable, but nonetheless opportunities for personal and professional learning for all parties concerned. Restorative justice and professional accountability standards may be seen as no more than theoretical concepts.

New Zealand’s discursive formation on therapeutic sexual exploitation produces something else, resistance. Looking to overseas trends, it has been shown that changes in discursive formations on therapeutic sexual exploitation have been due, in part, not to scientific advancements, but due to political movements of clients of service and families. These clients of service, and intimate partners, have refused to live in the shame caused by therapeutic sexual exploitation. They have spoken up, joined together and ensured therapeutic sexual exploitation is seen as a political issue, an institutional issue, as an issue of power, not a learning experience or an accident. Change has occurred when ex-clients of service have refused to carry the problem but have instead relocated the problem back to

the therapeutic disciplines concerned. That is not academic expertise. That is not a mental disorder. That is a change in power relations that ensures previously masked practices are revealed and previously silenced voices exist in the public domain.

This dissertation has attempted to conform to academic conventions and it exists within the privileged realm of Western knowledge-power that is called the human sciences. While it is not science, it carries the privilege and status of sitting within this created space called science. It is a social construction on New Zealand's discursive framework on therapeutic sexual exploitation. Its construction has also been influenced by many social and political variables and, like all scientific discourses, it continues to exclude voices and mask practices. Many things have been left unsaid. This dissertation has not challenged the prevailing dominant Western discourse of knowledge creation, of healing, of justice, of restoration, of abuse and violence. It has not challenged the absence of Maori knowledge in these areas. It is not the voice of New Zealand partners and children harmed, directly and indirectly, by therapeutic sexual exploitation. This dissertation has, however, framed therapeutic sexual exploitation, in various forms, as an abuse of trust that affects individuals and families. It has been suggested that it is time that the discourse on therapeutic exploitation adopts a new approach and places family, rather than the individual client of service, at the centre of the discourse on therapeutic sexual exploitation. Furthermore, this dissertation questions the validity of transference and counter-transference as scientific concepts. It calls into question the validity of the therapeutic encounter as much as it challenges what has been created and called, under Western notions of science, individualised mental illness. More simply, it has sought to raise awareness and invite one to question one's own contribution to silence, knowledge and power in New Zealand's discursive formation on therapeutic sexual exploitation.

History tells us the conversations on therapeutic sexual exploitation and Western notions of mental illness will continue.

Appendix One. Comparison of Definitions from Four Current New Zealand Therapeutic Associations²¹

	NZAC Code of Ethics 2009	ANZPA Code of Ethics 2009	NZAP Code of Ethics 2009	GANZ Code of Ethics 2009
Defining client of service and therapeutic practitioner	<p>“This Code applies to all NZAC Members and Applicants in the full range of their professional practices. Professional practice may include work in the roles of “counsellor, supervisor, therapist, trainer, educator, researcher, advocate, mediator, consultant, manager, coach, community worker, group facilitator, mentor, psychotherapist and spiritual advisor. The generic term ‘counsellor’ and ‘counselling’ apply to all professional roles undertaken by Members. The term ‘client’ refers to those receiving the ‘counselling’ services” (1).</p>	<p>“In this code the word <i>member</i> refers to any member of the Association who may be an associate, ordinary, distinguished or honorary distinguished member of ANZPA or other membership category that may be created from time to time” (p.1).</p> <p>“In this code the word <i>client</i> refers to all those with whom the members has a professional relationship. They may be individuals, including trainees in training groups conducted by ANZPA members or the Association, either community groups or groups in an organisational setting...” (p. 1).</p>	<p>“The Code of Ethics is intended to encompass all spheres of a psychotherapist’s practice. Competent practice is the individual responsibility of every psychotherapist, whether working with clients, supervisees or trainees” (p. 1).</p>	<p>“In this instant ‘client’ is understood to be a person/persons receiving therapy/training/supervision or other professional service from the ‘therapist’, in their designated role. Examples include: Trainer towards trainee Trainee/therapist toward client Supervisor towards supervisee Employer towards employee” (A. Ethical Principles)</p>
Defining therapeutic sexual relations as an ethical issue	<p>“Counsellors shall not engage in sexual or romantic activity with their clients. Counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after counselling has ended. Counsellors shall not</p>	<p>“Members will not engage in sexual or romantic activity with clients. Members will not exploit the intimacy made possible by any professional relationships. Members will maintain clear boundaries between themselves and close</p>	<p>“Psychotherapists shall recognise the power imbalance in the psychotherapeutic relationship and shall not abuse this power, nor exploit the relationship with the client for personal gain or gratification. Sexual harassment and any</p>	<p>“At all times the needs of the client, supervisee or trainee takes precedence over the personal needs of the therapist, never exploiting the client sexually or for personal, financial or other gain. Because of the particular transference</p>

²¹ All ‘current’ Codes of Ethics were electronically retrieved in 2009 from their respective websites. ANZPA’s 2007 Code of Ethics was electronically retrieved in 2007 from its website.

	sexually harass their clients. Counsellors shall not provide counselling to persons with whom they have had a sexual or romantic relationship” (5.13a-d). Counsellors shall not exploit clients for purposes of personal, professional, political or financial gain (5.12). Teachers shall not engage in sexual or romantic activity with their students/trainees (10.6). Supervisors are responsible for maintaining boundaries between supervision and other relationships the supervisor may have the counsellor (9.2). Teachers shall not abuse their position by exploiting student/trainees for purposes of personal, professional, political or financial gain” (10.5.a).	friends, relatives and employees who make seek assistance from them. Members will alert their supervisor to any inclination to consider any relationship other than the professional relationship” (p. 4: 2.3a-d).	behaviours or comments by psychotherapists which might reasonably be interpreted as being sexually demeaning or as a sexual advance, are unethical. Abstain from sexual relations with clients. Avoid sexual relations with formal clients. Sexual relationships between psychotherapists and their former clients are unethical when the dynamics of psychotherapy can reasonably be expected to influence the relationship in an on-going manner” (1,15-1.18). Abstain from sexual relations with current supervisees/trainees. The establishment of sexual relationships between a psychotherapists and his or her current supervises or trainees is unethical” (2.13).	nature of the therapeutic relationship, all sexual intercourse and other sexual activities must necessarily be considered exploitative during therapy, and for some time thereafter. Friendships, sexual and other relationships with ex-clients must not be entered into lightly. Due consideration and consultation or supervision, prior to entering the relationship, on the responsibilities that might still be attached to the former professional relationship is essential” (Exploitation).
Defining responsibilities to provide a safe therapeutic environment	“Teachers shall take reasonable steps to protect participants from harm.” Counsellors shall take all reasonable steps to protect clients from harm” (5.1.a). Counsellors shall, as far as possible, protect group members from physical threats, intimidation, coercion, undue peer pressure, and psychological and/or physical harm” (12.1)	“Provide a safe working environment and take actions to protect clients from harm” (p. 4. 2.2.b).	“Psychotherapists shall take reasonable steps to ensure that clients, whether in individual, family or group settings, suffer neither physical nor psychological harm during the conduct of psychotherapy, accepting that considerable distress may be an inevitable part of the process” (1.14).	“To take all reasonable steps to avoid intentional or deliberate harm to the client as a result of the therapeutic/counselling processes. In the event of harm resulting from therapy, members take responsibility for restitution. Professional indemnity should be considered in this context” (Ethical Responsibilities).

Defining care to third parties	<p>“Counsellors will promote the safety and well-being of individuals, families, communities, whanau, hapu and iwi”(ethical principle, 4.5).</p> <p>“Counsellors shall warn third parties and appropriate authorities in the event of an imminent threat of serious harm that third party from the client” (5.1.d).</p>	<p>“Members will alert the appropriate authorities and third parties in the event of imminent threat of harm to a client or third party” (p. 4. 2.3.g).</p>	<p>“Since considerations of safety or legal obligations may on occasion override confidentiality, psychotherapists shall discuss these limits with clients” 1.6.</p>	<p>“To consider the social context of the client and their connections to others” (Responsibilities to client).</p> <p>“If there is risk of harm to the client’s well being or life, to others, to the community at large, or serious damage to property, confidentiality may have to be breached” (Confidentiality).</p>
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Appendix Two: Historical Developments in ANZPA's Codes of Ethics

	1994: First Code of Ethics - ANZPA	2007: Code of Ethics - ANZPA	2009: Code of Ethics – ANZPA
Defining client of service and therapeutic practitioner	<p>“Practitioners”: Psychodramatists, Sociodramatists, Role Trainers, T.E.P.s (Trainers, Educators and Practitioners) and all members of the association.</p> <p>Clients: Individuals, groups, communities, institutions or organisations who are the focus of the practitioner’s professional services” (p. 3).</p>	<p>“In this code the word <i>member</i> refers to any member of the Association who may be an associate, ordinary, distinguished or honorary distinguished member of ANZPA or other membership category that may be created from time to time” (p.1).</p> <p>“In this code the word <i>client</i> refers to all those with whom the members has a professional relationship. They may be individuals, groups or in an organisational setting they may also be the organisation or a representative or the organisation...” (p. 1).</p>	<p>“In this code the word <i>member</i> refers to any member of the Association who may be an associate, ordinary, distinguished or honorary distinguished member of ANZPA or other membership category that may be created from time to time” (p.1).</p> <p>“In this code the word <i>client</i> refers to all those with whom the members has a professional relationship. They may be individuals, including trainees in training groups conducted by ANZPA members or the Association, either community groups or groups in an organisational setting they may also be the organisation or a representative or the organisation...” (p. 1).</p>
Defining therapeutic sexual relations as an ethical issue	<p>“Practitioners do not exploit the relationship with a client for the purposes of professional, political, financial or personal advantage or gratification” (2.3.a)</p> <p>“Practitioners do not engage in sexual activity with their clients whilst in therapy” (2.3.e).</p> <p>“Trainers will not exploit trainees financially, psychologically, physically or in any other manner detrimental to a trainee or</p>	<p>“Members will not engage in sexual or romantic activity with clients. Members will not exploit the intimacy made possible by any professional relationships. Members will maintain clear boundaries between themselves and close friends, relatives and employees who make seek assistance from them. Members will alert their supervisor to any inclination to consider any relationship other than the professional relationship” (p. 4: 2.3a-d).</p>	<p>“Members will not engage in sexual or romantic activity with clients. Members will not exploit the intimacy made possible by any professional relationships. Members will maintain clear boundaries between themselves and close friends, relatives and employees who make seek assistance from them. Members will alert their supervisor to any inclination to consider any relationship other than the professional relationship” (p. 4: 2.3a-d).</p>

	<p>advantageous to the trainer” (3.2.c).</p> <p>“Where a friendship with a trainee progresses to the point where they are contemplating a sexual relationship, practitioners have a choice; either to stop the relationship or to terminate the professional relationship. Unless special circumstances apply, practitioners have a clear responsibility to ensure that the trainee is appropriately referred to another professional” (3.2.g).</p>		
Defining responsibilities to provide a safe therapeutic environment	<p>“Recognising that the training process may include sessions in which sensitive, personal, private information may be revealed by both trainees and trainers, trainers maintain the same high standards of group confidentiality for training groups as are appropriate to therapeutic and personal growth groups, and teach these standards to their trainees” (3.2.g) “In group settings, practitioners make every effort to assist individuals in not coming to physical or psychological harm resulting from interaction within the group” (2.1.4.b)</p>	<p>“Provide a safe working environment and take actions to protect clients from harm” (p. 4. 2.2.b).</p>	<p>“Provide a safe working environment and take actions to protect clients from harm” (p. 4. 2.2.b).</p>
Defining care to third parties	<p>No mention is made to care of third parties.</p>	<p>“Members will alert the appropriate authorities and third parties in the event of imminent threat of harm to a client or third party” (p. 4. 2.3.g).</p>	<p>“Members will alert the appropriate authorities and third parties in the event of imminent threat of harm to a client or third party” (p. 4. 2.3.g).</p>

Appendix Three. Historical Developments in NZAC's Codes of Ethics

	1975: First Code of Ethics (NZAC)	1991: Draft Code of Ethics (NZAC)	2009: Code of Ethics (NZAC)
Defining client of service and therapeutic practitioner	There are no definitions of client or member, but reference is made to 'members' and 'individuals seeking guidance or counselling'.	No definitions provided, but the words counsellor and client are used throughout the document.	"This Code applies to all NZAC Members and Applicants in the full range of their professional practices. Professional practice may include work in the roles of "counsellor, supervisor, therapist, trainer, educator, researcher, advocate, mediator, consultant, manager, coach, community worker, group facilitator, mentor, psychotherapist and spiritual advisor. The generic term 'counsellor' and 'counselling' apply to all professional roles undertaken by Members. The term 'client' refers to those receiving the 'counselling' services'" (1).
Defining therapeutic sexual relations as an ethical issue	It was not mentioned.	<p>"Abuse of Power Counsellors shall not abuse their position by taking advantage of clients for the purposes of personal, professional, political, financial or sexual gain. Counsellors are responsible for setting and monitoring the boundaries between a counselling relationship and any other kind of relationship and for making such boundaries as clear as possible to the client" (Point 9).</p> <p>"Sexual Harassment In the counselling relationship the client shall be free from the possibility of</p>	"Counsellors shall not engage in sexual or romantic activity with their clients. Counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after counselling has ended. Counsellors shall not sexually harass their clients. Counsellors shall not provide counselling to persons with whom they have had a sexual or romantic relationship" (5.13a-d). Counsellors shall not exploit clients for purposes of personal, professional, political or financial gain (5.12). Teachers shall not engage in sexual or romantic activity with their students/trainees (10.6). Supervisors are responsible for

		sexual exploitation or sexual harassment. Counsellors shall not engage in sexual activity with their clients” (Point 10).	maintaining boundaries between supervision and other relationships the supervisor may have the counsellor (9.2). Teachers shall not abuse their position by exploiting student/trainees for purposes of personal, professional, political or financial gain” (10.5.a).
Defining responsibilities to provide a safe therapeutic environment	It was not specifically mentioned.	<p>“Group Counselling</p> <p>In group settings, counsellors should make every effort to protect individuals from physical and/or psychological harm resulting from interaction within the group” (Point 8).</p> <p>“Counsellors shall avoid diagnostic labels, counselling methods, use of assessment data or other practices which are likely to cause harm to clients” (Principle of not doing harm).</p>	<p>“Teachers shall take reasonable steps to protect participants from harm.”</p> <p>Counsellors shall take all reasonable steps to protect clients from harm” (5.1.a).</p> <p>Counsellors shall, as far as possible, protect group members from physical threats, intimidation, coercion, undue peer pressure, and psychological and/or physical harm” (12.1)</p>
Defining care to third parties	There is no mention of family or third parties.	<p>“Counsellors shall respect the dignity and worth of every individual, the integrity of families/whanau and the diversity of cultures”(Principle of Autonomy).</p> <p>“Exceptions to [confidentiality] will occur when, in the professional judgment of the counsellor, there is clear and imminent danger to the client or others. This includes circumstances where the client’s competence to make a decision is obviously limited. In these circumstances the counsellor shall take reasonable personal action or inform responsible authorities” (Confidentiality).</p>	<p>“Counsellors will promote the safety and well-being of individuals, families, communities, whanau, hapu and iwi”(ethical principle, 4.5).</p> <p>“Counsellors shall warn third parties and appropriate authorities in the event of an imminent threat of serious harm that third party from the client” (5.1.d).</p>

Appendix Four: Complaints Processes, Statute Law and Common Law (The United States and Great Britain)

Appendix 4A: Regulatory Bodies and Complaint Processes

The United States

A number of American texts on ethics and sexual relations within therapeutic environments were consulted (Corey, 2008; Corey, Corey & Callanan, 2007; Corey, Corey & Callanan, 1998; Goodrich, 2008; Herlihy & Corey, 1992; Moleski & Kiselica, 2005; Pepper, 2002; Pepper, 2007; Pope & Vasquez, 1998; Wheeler & Bertram, 2008). All authors made reference to the fact that sexual relations with therapeutic environments would breach current ethical standards and some noted such breaches could have professional, criminal or civil consequences. However, referring to legal considerations was by and large, a very small subsection of such discussions.

Wheeler and Bertram (2008) was the text most dedicated to exploring the links between therapeutic practice and the law. Both authors had professional connections with mental health professionals and they opened their book with the following:

“We understand that for many practicing mental health professionals and most graduate students, the legal system is a foreign and sometimes frightening place. It is filled with adversarial relationships and governed by rules that are unfamiliar and unfriendly” (Wheeler & Bertram, 2008, p. 1).

The validity or genuineness of this statement is not questioned. However, the majority of texts that I read did not make mention of how clients of service might feel even to embark upon a complaint's process, yet alone a law suit, against someone of professional standing, against someone with whom they placed trust perhaps over many years, against someone who may have intimate knowledge of their psychological vulnerabilities. It is less likely that clients of service belong to any insurance programme that will cover their financial costs in any unlikely and unfortunate court case. So, while drawing on the American law as defined by Wheeler and Bertram (2008) it must be remembered that the text is primarily directed towards the emotional, ethical and legal concerns of psy-professionals – not those of clients.

Wheeler and Bertram (2008 pp 104 - 107) provided statistics from four American registration or licensing boards: Texas, Arizona, Ohio and Maryland. In all states, the percentages of sexual misconduct complaints were significant. One state recorded 66% and two recorded 42%, of all complaints received involved complaints of a sexual nature

(Texas marriage therapists, 2004; Texas professional counsellor, 2004; Ohio 1998-2004, respectively). Maryland reported 33% of counsellors were disciplined for sexual misconduct between the years 2001 -2006. Arizona reported that 25% adverse actions (from 2000 to 2006) were related to sexual or other boundary related issues. The collection and publication of such data is useful for it highlights the fact that sexual exploitation in therapeutic environments is not an isolated concern for a client of service, but more likely a concern for the profession. It also would seem to suggest that Codes of Ethics prohibiting such behaviour has not stopped such behaviour. The created ethics may, however, have given more voice to clients of service and their families.

Great Britain

As with the United States, numerous British texts discussed sexual dual relationships in therapeutic environments (Feltham, 1999; Hermansson, 1997; Heatherington, 2000; Jenkins, 2007; Jones et al, 2000; Russell, 1993; Sarker, 2004; Syme, 2003 and Webb, 1997). As with the American texts, most texts did not provide a lot of detail, and little historical analysis, about the professional and legal discourse surrounding sexual relations in therapeutic environments. Syme (2003) was an exception, and she did provide some statistics on therapeutic sexual exploitation. The only text that was located which dedicated itself to legal matters within counselling/psychotherapy was *Counselling, Psychotherapy and the Law* (Jenkins, 2007).

Jenkins (2007) was a therapeutic practitioner writing about the law for therapeutic practitioners. He noted that his first edition, printed in 1997, was driven from his puzzlement as to why there was such little literature on the relationship between therapy and law. His second edition, however, was a response to the comment he heard at a conference where someone said that there is no case law on counselling in the United Kingdom. In his second edition, Jenkins suggested that while this might be true, in the strictest sense, he repeatedly pointed out that this is the situation for now, and not necessarily for all times to come. He stated that:

the overall theme of this book is that the law is dynamic, fluid and rapidly changing, rather than being fixed for all time. Therapists need to be alert to all issues which have an impact on a broad spectrum of their work with clients (Jenkins, 2007, p. 3).

Jenkins (2007) did not discuss in detail therapeutic sexual exploitation. This topic does not have its own chapter, or its own sub-heading, or any heading. Nor does Jenkins (2007) provide any British data on how many complaints are received by psy-professional

complaints bodies and/or what percentage of all complaints received are of a sexual nature. Therefore, Syme (2003), while not a therapeutic-legal text, does provide statistical data about complaint bodies, although such data is little dated now. This information was recorded in chapter four of this dissertation but it is appropriate to repeat it here. In year April 2000 to March 2001 the British Association of Counselling and Psychotherapy received 158 complaints enquiries of which nine related to inappropriate sexual behaviour. During the same period, 60 complaints were currently being investigated by BACP of which 8.5% involved concerns related to sexually inappropriate behaviour. The related psy-association, the British Psychological Society in the year 1999, resolved 28 conduct related complaints, of which half were related to sexual exploitation. Interestingly, when referring to statistics provided by Prevention of Professional Abuse Network (POPAN), the statistics were significantly higher. In the year 1999-2000, 38% of all complaints received were against counsellors, psychotherapists and psychologists. Of that 38% of complaints, 27% complaints were of a sexual nature (Syme, 2003).

As mentioned at the beginning of this chapter, there are disadvantages for therapeutic practitioners not belonging to a registered profession. As an example from Britain, a formal complaint was laid against the member of the British Association of Counselling and Psychotherapy for having sexually exploited a client. The therapeutic practitioner, however, refused to respond or engage with the complaints' process. After following due process, under section 42 of the Memorandum and Articles of the BCAP the therapeutic practitioner concerned had his membership removed. However, the material effects of no professional registration, means that the same therapeutic practitioner could continue to legally practice as a counsellor/psychotherapist, but just not belong to this professional association (Encyclopaedia Britannica, 2010).

Appendix 4B: Statute Law

United States

In some states within the United States, clients who are concerned about the transparent and impartial complaints processes may approach the police to lay a criminal charge against an offending practitioner. Corey, Corey and Callanan, (2008, p. 300) named 16 states in America where it is now an illegal offense to have sexual relations with one's therapeutic client, although "other jurisdictions are working toward passage of similar laws, and most will eventually pass some type of legislation to curb therapists' sexual misconduct." As an example, a Florida Statute, passed in 2006, stated that consent by a

client is not a justifiable defence for the defendant's actions, referring to the powerful issues of transference inherent in the therapeutic relationship (Wheeler & Bertram, 2008).

Furthermore, the penalty in America for the practitioner is harsher if he or she claimed that sexual contact was part of the therapeutic treatment, that is, beneficial to the client's healing and emotional status. As a consequence, a therapeutic practitioner can be imprisoned for a number of years for abusing such trust. Since the days of Freud the law and the discourse around material effects of therapeutic sexual exploitation has most definitely changed. Such changes in discourse have no doubt been influenced by the extra-discursive, and in this instance, through the criminalization of therapeutic sexual exploitation.

Great Britain

Unlike the United States there is no specific statute law in Great Britain that makes it illegal for a counsellor or therapeutic practitioner to have sexual relations with his or her client (Jenkins, 2007). Russell (2003) commented on the rise of American legislative change in this area noting her general reservations around the role of punishment being used as a change agent. This is an interesting point and highlights a bigger issue around the purpose and value of punishment. What are disciplinary bodies there for: as change agents, to act as a deterrent, to provide a consequence for breaking socially defined rules – or all three? Russell (2003) conceded that self-regulation may, by itself, be problematic. She thought that there may be a role for punishment at common law and statute law, with such options giving weight for society's lack of tolerance for such unethical behaviour from psy-professionals, as well as publically authenticating the client's traumatic experience.

Appendix 4C: Common Law

United States

In the United States there are lawyers who now specialise in civil cases on professional exploitation. On behalf of their clients, these lawyers can seek compensation for their client's pain and suffering and/or impairment of earning capacity due to therapeutic sexual exploitation. Clients may also seek damages for subsequent hospitalization, therapy or medical expenses resulting from the trauma of sexual exploitation within therapeutic environments (Advocate Web, n.d.). In the United States clients of service have the legal right to sue their therapeutic practitioner for the emotional pain and suffering caused by therapeutic sexual exploitation, as well as for any financial costs incurred as a result of a breach of ethical standards.

Allen (1996) is an English legal commentator on the area of civil liability for sexual exploitation in professional relationships. However, while he was writing about English case law in this area, he referred to the American and Canadian case law, noting the challenges of finding appropriate doctrines of law to fit professional sexual exploitation: professional negligence, contract or battery. However, Allen (1996) argued that none of these doctrines adequately fit the situation of therapeutic sexual exploitation. He suggested that:

sexual exploitation cannot be described by expressing the problem solely as a matter of impaired choice or a lack of professional skill. Neither of these fully address the third key aspect of sexual exploitation: the breach of trust by the defendant (Allen, 1996, p 71).

Allen (1996) argued that the law of equity is best suited for this situation, since therapeutic sexual exploitation is ultimately a breach of trust for the benefit of the therapeutic professional. It is not just negligence, for the therapeutic practitioner is receiving some benefit from the breach of trust. However, traditionally, the law of fiduciary duties has revolved around ensuring professionals, such as lawyers and accountants do not abuse their position of trust and power with their clients to further their own *financial* interests. As a result, if the defendant was found to have breached their duty of trust, then compensation was only in terms of addressing any *financial* loss incurred by the plaintiff, not for any psychological harm.

This seems to have left the courts in a dilemma as to how to follow appropriate legal doctrines while at the same time providing adequate and just compensation for a sexually exploited client. As a result it seems that Canadian courts have fashioned a response to sexual exploitation ensuring that non-financial damages, such as harm for psychological damages can be awarded for clients who have been sexually exploited by a professional. In the Canadian case of *Norberg v Wynrib* McLachlin J stated that: “the common law of torts cannot respond to sexual exploitation adequately because the common law basically assumes that individuals are “independent and equal actors, concerned primarily with self-interest” (Allen, 1996, p. 77). Allen (1996) concluded his article by suggesting that:

In professional relationships, individuals do not always deal with each other on an equal footing. Of course, neither battery nor negligence entirely ignores disparities in power nonetheless....doctrinal barriers to recovery remain in the way of responding adequately to the breach of trust inherent in sexual exploitation. Only the law of fiduciary duties begins from the premise that certain relationships are fundamentally unequal and seeks to prevent an abuse

of that inequality. If the legal system in [England] is to respond adequately to sexual exploitation, it must either follow the Canadian approach or introduce a statutory equivalent to it (Allen, 1996, Ibid).

This quote is significant, for it captures, perhaps better than the other legal commentators that I read, the particular nature of therapeutic sexual exploitation. It is the breach of psychological trust that is so devastating for clients of service. Interestingly, Wheeler and Bertram (2008 p. 35) took a different angle and noted that counsellors can be sued for “acting wrongly toward a client or for failing to act when there was a recognised duty to do so, when action or inaction results in injury to another.” The end result, if successful, is financial compensation for the party or parties concerned. In the analysis provided here, the authors suggested that clients can sue for malpractice (professional negligence) and then suggest that such action is premised on the existence of a fiduciary relationship between the counsellor and the client. In this account, these two separate fields of the law are blended into one, and from their point of view it seems that four things are needed to be established at common law for damages: a professional duty of care, a breach of that care, causation and resulting injury. In my opinion, this analysis slightly misses the breach of trust, and the devastation caused by that breach of trust, in describing it as mere professional negligence.

The point to be taken from these discussions is that when looking to America (and Canada) the issue of sexual exploitation in professional relationships has been addressed in the courts through common law. It is complex and evolving, but what is clear, is that the courts have been willing to find a way under common law to ensure clients of service receive appropriate compensation for damages incurred as a result of sexual exploitation in therapeutic environments. In the United States, the psychological damage to clients of service in such cases is taken very seriously.

Furthermore, in the United States restitution at common law has been extended to cover partners of clients of service for their damages in such situations. Therapeutic practitioners now not only have an ethical duty *but also a legal duty* to fulfil the trust placed in them by their clients and service – but this might also be extended to include their client’s partner. There is recognition that such a breach of professional trust can also devastate the lives of partners. This is an illustration of how the standard of care therapeutic practitioners are expected to reach is an ever-evolving concept that is shaped by many factors: education, ethics, research, state laws, case law, third party payers, policies, real-world practices and opinions. These factors also influence the discursive

formation on therapeutic sexual exploitation, for the voices of partners have been heard, at least voiced, through courts of law.

An example of this can be seen in a case in the state of Washington, (*Doe v Wood*, 1994) a husband took his wife's therapeutic practitioner to court, for having romantic connections with his wife whilst acting as her therapeutic practitioner. The therapeutic practitioner had written intimate letters to the woman whilst her therapist and to some degree the wife reciprocated such feelings. The husband and wife separated. The husband claimed symptoms of depression, emotional distress, and stated he had difficulty working which resulted in a loss of income. He sued the counsellor, under common law, for professional negligence. The court awarded US\$525,000, on the grounds that the counsellor had been professionally negligent (Wheeler & Bertram, 2008). It seems that it is feasible to suggest that family members are also devastated by such a breach in professional ethical standards, irrespective of what legal doctrine is applied in court. It also seems that American courts have not been willing to engage in a discourse which implicitly or explicitly suggests that having sexual relations with a client in a therapeutic setting, (a client who also happens to be someone else's intimate partner) is merely a therapeutic learning opportunity for all concerned.

Great Britain

Webb (1997, p. 2) in writing in the *British Journal of Guidance and Counselling*, noted that:

“counselling involves a fiduciary relationship: clients entrust themselves to providers; in exchange for this, the latter offer trustworthiness and expertise. Clients, however, cannot readily judge the appropriateness of counselling dynamics for themselves and need additional protection. Fiduciary relationships such as counselling require particular care in the ethical management and therefore employ codes of ethics to articulate their rules which govern their boundaries.”

Jenkins (2007) goes into more legal detail, and refers to British case law on the matter. In the opening of his chapter, entitled *Professional Negligence, Liability and Duty of Care*, he suggested that case law on therapeutic practitioner negligence is still limited in scope – and to a large degree, such discussions about the exact nature of duty of care is still quite hypothetical. He does refer to one case tried in the Court of Appeal in England, *Werner v Landau* (1961), which was framed as therapist negligence, which coincidentally was

concerned a) blurred sexual boundaries and b) blurred social boundaries within the psychotherapeutic relationship.

He reported that at the time, the English Court of Appeal apparently considered whether such action would be best served under a professional negligence or a breach of contract. It upheld that the psychotherapist had acted negligently with regard to his social contact with Laudau and that this had directly caused long term emotional damage for the plaintiff. The court also considered the issue of transference, negligence response to transference (that is counter-transference) and the allegations of sexual relations between the plaintiff and the defendant. Jenkins (ibid) reported that the Court of Appeal found that transference was an accepted part of the treatment and that Lindau had acted negligently in this regard – by seeing his client socially, rather than limiting his contact to professional services. However, with regards to issues of transference and allegations of sexual relations, the Court of Appeal dismissed the plaintiff's claims on the grounds that it was just her 'erotic fantasy'. Sexual contact was deemed never to have taken place. Noting the year of the case, 1961, it may well be suggested that Laudau was a brave woman, and as Jenkins (2007) commented, such a finding might not be so easily dismissed today, given the research into the prevalence of sexual misconduct by therapeutic practitioners. This example certainly highlights how courts of law, as disciplinary technologies, can often reflect the prevailing knowledge-power interests of the day.

When discussing the issues of tort law Jenkins (2007) identified, indirectly, the connection between expert knowledge and power. He made similar points to those made by Russell (1993) and Hetherington (2000). Under a claim in negligence the test for the appropriate standard of care is actually determined by calling 'experts' in the field to give evidence on what might be deemed acceptable standards of care. As Jenkins (2007, p 83) said, however:

the weakness of this system is that it relies heavily on peer defence, and the evaluation of normative standards, namely the level of practice of reasonable competent practitioners at that particular time... this could mean that the standard, while constituting the norm for practice, is basically flawed, unsound or lacking in a convincing research or evidence base.

This is another example of what Foucault (1969/1972) was referring to when he attempted to explain the mutual reliance of power relations and discourse. He suggested that dominant discourses can be described as the "anonymous field whose configuration defines the possible position of speaking rights" (Foucault, 1969/1972, p.122). In any situation, not all people have the equal placement on the speaking rights platform. One can see the

potential challenges that a client of service-plaintiff would face in arguing a new point of law given the self-perpetuating cycle of knowledge-power-knowledge. For a client of service to argue therapeutic negligence in a new area of the law, such as client-client sexual relations, would be a difficult and expensive task. In essence, the client of service would be challenging the ethos and power that if expert opinion says it is so, and all experts are saying so, then it must be so.

Jenkins (2007) does not debate the appropriateness of professional negligence (tort law) being used as opposed to a breach of fiduciary law (equity law) and nor does he debate the corresponding legal issues as to remedy, as other legal commentators have done (Allen, 1996; McCamus, 1997). Rather it seems he has suggested that there is general duty within the bounds of tort and that one might only have to show this general duty of care, that there has been a breach of that duty, and that it resulted in foreseeable harm to the client. What Jenkins did say was that the lack of British case law on the topic of therapeutic negligence, was more likely to represent the legal obstacles inhibiting client challenges to the profession – not a lack of cases of negligence or exploitation by therapeutic practitioners, *per se* (Jenkins, 2007).

Appendix Five: Extracts from the Crimes Act 1961

128 B Sexual violation

- (1) Sexual violation is the act of a person who—
 - (a) rapes another person; or
 - (b) has unlawful sexual connection with another person
- (2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis,—
 - (a) without person B's consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.
- (3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B—
 - (a) without person B's consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.
- (4) One person may be convicted of the sexual violation of another person at a time when they were married to each other.

128 A Allowing sexual activity does not amount to consent in some circumstances

- (1) A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.
- (2) A person does not consent to sexual activity if he or she allows the activity because of—
 - (a) force applied to him or her or some other person; or
 - (b) the threat (express or implied) of the application of force to him or her or some other person; or
 - (c) the fear of the application of force to him or her or some other person.
- (3) A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.
- (4) A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.
- (5) A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.
- (6) One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.
- (7) A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality.
- (8) This section does not limit the circumstances in which a person does not consent to sexual activity.
- (9) For the purposes of this section,—

allows includes acquiesces in, submits to, participates in, and undertakes sexual activity in relation to a person, means—

- (a) sexual connection with the person; or
- (b) the doing on the person of an indecent act that, without the person's consent, would be an indecent assault of the person.

Appendix Six: Extracts from the Injury Prevention, Rehabilitation and Compensation Act 2001

32 (1) Treatment injury means personal injury that is –

- (a) Suffered by a person –
 - (i) Seeking treatment from 1 or more registered health professionals; or
 - (ii) Receiving treatment from, or at the direction of, 1 or more registered health professionals; or
 - (iii) Referred to in subsection (7); and
- (b) Caused by the treatment; and
- (c) Not a necessary part, or ordinary consequence, of the treatment, taking into account all the circumstances of the treatment, including
 - (i) The person's underlying health condition at the time of treatment; and
 - (ii) The clinical knowledge at the time of the treatment

26 (1) Personal Injury means –

- (a) The death of a person; or
- (b) Physical injuries suffered by a person, including for example, a strain or a sprain; or
- (c) Mental injury suffered by a person because of physical injuries suffered by the person
- (d) Mental injury suffered by a person in the circumstances described in section 21

21 Cover for mental injury caused by certain criminal acts

- (1) A person has cover for a personal injury that is a mental injury if -
 - (a) he or she suffers the mental injury inside or outside New Zealand on or after 1 April 2002; and
 - (b) the mental injury is caused by an act performed by another person; and
 - (c) the act is of a kind described in subsection (2).
- (2) Subsection (1)(c) applies to an act that—
 - (a) is performed on, with, or in relation to the person; and
 - (b) is performed—
 - (i) in New Zealand; or
 - (ii) outside New Zealand on, with, or in relation to a person who is ordinarily resident in New Zealand when the act is performed; and
 - (c) is within the description of an offence listed in Schedule 3.

Appendix Seven: Injury Prevention, Rehabilitation, and Compensation Act 2001

Schedule Three:

Cover for mental injury caused by certain acts dealt with in Crimes Act 1961

- 128 Sexual violation
- 129 Attempt to commit sexual violation
- 129A Inducing sexual connection by coercion
- 130 Incest
- 131 Sexual intercourse with girl under care or protection
- 132 Sexual intercourse with girl under 12
- 133 Indecency with girl under 12
- 134 Sexual intercourse or indecency with girl between 12 and 16
- 135 Indecent assault on woman or girl
- 138 Sexual intercourse with severely subnormal woman or girl
- 139 Indecent act between woman and girl
- 140 Indecency with boy under 12
- 140A Indecency with boy between 12 and 16
- 141 Indecent assault on man or boy
- 142 Anal intercourse
- 142A Compelling indecent act with animal
- 194 Assault on a child, or by a male on a female. For the purposes of this schedule, section 194 of the Crimes Act 1961 must be regarded as relating only to situations where a female sexually assaults a child under 14 years old.
- 201 Infecting with disease
- 204A Female genital mutilation
- 204B Further offences relating to female genital mutilation

List of References

- Adler, R. (1997). Post-termination Patient-therapist Sexual Contact. *Australian and New Zealand Journal of Psychiatry*, 31(1): 149.
- Advocate Web. (n.d.). Retrieved from http://www.advocateweb.org/home.php?page_id=24 in 2010.
- Allen, T. (1996). Civil Liability for Sexual Exploitation in Professional Relationships. *The Modern Law Review*. MLR 59: 1 January: 56-77.
- American Counseling Association. Code of Ethics. Retrieved from www.counseling.org/resources/CodeofEthics/TPHome in 2009.
- Australia and New Zealand Psychodrama Association. (1994). *Code of Ethics, 1994*. Private Copy.
- Australia and New Zealand Psychodrama Association. (n.d). *Code of Ethics*. Retrieved from <http://www.anzpa.org> in 2007.
- Australia and New Zealand Psychodrama Association. (n.d.) *Code of Ethics*. Retrieved from <http://www.anzpa.org> in 2009.
- Barton, J. (1999). *Psychodrama in a Small Town General Practice*. Dissertation for Australia and New Zealand Psychodrama Association.
- Besley, A.C. (Tina). (2002). Foucault and the Turn to Narrative Therapy. *British Journal of Guidance and Counselling*, 30(2): 125 – 142.
- Besley, A. C. (Tina). 2005 Self-denial or Self Mastery? Foucault's Genealogy of the Confessional Self. *British Journal of Guidance and Counselling*, 33(3): 365-382.
- Beck, A. (2007). Limitation in the Supreme Court. *New Zealand Law Journal*, June: 213-217
- Beck, A. (2008) Professional Disarray. *New Zealand Law Journal*, August: 285-288
- Bell, S. & Brookbanks, W. (2005). *Mental Health Law in New Zealand*. (2nd ed.). Wellington: Brookers.
- Blatner, A. (2000). Foundations of Psychodrama. History, Theory and Practice. (4th ed.). New York: Springer Publishing Company.

- British Association of Counselling and Psychotherapy. (n.d.) *Code of Ethics*. Retrieved from http://www.bacp.co.uk/ethical_framework/ in 2009.
- Brown, H (2007). "Reasonable Discoverability: The Final Word?" *New Zealand Law Journal*, June: 183-185.
- Bowden, A. R. (2001). *A Psychotherapist Sings in Aotearoa. Psychotherapy in New Zealand*. Mana: Caroy Publications.
- Bunce, J. (1992). Counselling Research and Practice: The New Zealand Experience. *New Zealand Journal of Counselling*, 14(2): 2-10
- Careers Service, (n.d). Retrieved from <http://www.careers.govt.nz> in 2010.
- Clarke, D. (1999). Sex, honesty and the Supervisory Relationship: A Response to Ryan. *Australian and New Zealand Journal of Psychiatry*, 33: 339-343.
- Cook, P. (1996). The early history of the New Zealand Association of Psychotherapists and the related movement for primary prevention in mental health: some recollections. *Australian and New Zealand Journal of Psychiatry*, 30 (3): 405-409.
- Corey, G. (2008). *Theory and Practice of Group Counseling*. (7th ed.). United States: Brooks/Coles.
- Corey, G., Corey, M. and Callanan, P. (2007). *Issues and Ethics in the Helping Professions*. (8th ed). California: Brooks/Cole Publishing Company.
- Corey, G., Corey, M. and Callanan, P. (1988). *Issues and Ethics in the Helping Professions*. California: Brooks/Cole Publishing Company.
- Corsini R. (2001). *Handbook of Innovative Therapies*. (2nd ed.). New York: John Wiley & Sons.
- Cornforth, S. (2006). *Controversies in Counselling: Rethinking Therapy's Ethical Base*. Unpublished doctoral dissertation, Victoria University, Wellington, New Zealand.
- Crimes Act (1961). Retrieved from <http://www.brokersonline.co.nz> in 2010.
- Davies, B. (2006). Subjectification: The relevance of Butler's analysis for Education. *British Journal of Sociology of Education*, 27(4): 425-438.
- Director of Proceedings v Mogridge (2007). Human Rights Review Tribunal. Retrieved from <http://www.lexisnexis.comezproxy.canterbury.ac.nz/legal/frame>.

- Disch, E. (n.d.). *Is there something wrong or questionable about your treatment?*
Retrieved from <http://therapyabuse.org/papers.basta.htm> in 2010.
- Discipline. (2003). *Concise Dictionary and Thesaurus*. Glasgow: HarperCollins Publishers.
- Drewery, W. (2005). Why We Should Watch What We Say. Position Calls, Everyday Speech and the Production of Relational Subjectivity. *Theory and Psychology*, 15, (3): 305-324.
- Drewery, W. & McKenzie, W. (1999). Therapy and Faith. In I. Parker (Ed.), *Deconstructing Psychotherapy*. London: Sage.
- Edwards, J. (2008). Secondary Legal Consequences of Mental Illness/Compulsory Treatment. *Mental Health. Continuing Legal Education*.
- Ellsworth, E. (1989). Why Doesn't This Feel Empowering? Working Through the Repressive Myths of Critical Pedagogy? *Harvard Education Review*, 59(3): 297-324.
- Encyclopaedia Britannica, (n.d.). <http://www.britannica.com/BACP-Professional-conduct-hearing-findings-decisionsandsanctions>.
- Feltham, C. (1999). Facing, Understanding, and Learning from Critiques of Psychotherapy and Counselling. In *British Journal of Counselling*, 27(3), 301-311.
- Fish, V. (1999). Clementis's Hat: Foucault and the Politics of Psychotherapy. In I. Parker (Eds.), *Deconstructing Psychotherapy*. London: Sage.
- Fitzgerald, P. (1999). Sex, Lies and Training Programs: The Ethics of Consensual Sexual Relationships Between Psychiatrists and Trainee Psychiatrists. *Australian and New Zealand Journal of Psychiatry*, 33(1), 119-120.
- Flores, E. (n.d.). *A Husband's Story*. Retrieved <http://www.therapyabuse.org/husbandstory> in 2010.
- Foucault, M. (1961/2008). *Madness and Civilization. A History of Insanity in the Age of Reason*. London: Routledge.
- Foucault, M. (1966/1970). *The Order of Things: Archaeology of the Human Sciences*. London: Travistock Publications.
- Foucault, M. (1969/1972). *The Archaeology of Knowledge and the Discourse on Language*. New York: Travistock Publications Limited.

- Foucault, M. (1980/1991a). Politics and the Study of Discourse. *The Foucault Effect. Studies in Governmentality* (pp 53-62). G. Burchell, C. Gordon; and P. Miller (Eds.). Chicago: University of Chicago Press.
- Foucault, M. (1980/1991). Questions of Method. G. Burchell, C. Gordon; and P. Miller (Eds.). *The Foucault Effect. Studies in Governmentality* (pp 73-86). Chicago: University of Chicago Press.
- Foucault, M. (1983). *Foucault Replies to Questions from the Audience at Berkley's History Department in 1983*. (Retrieved www.generation-online.org/p/fp/foucault4.htm).
- Gabbard, G. (1997). Lessons to be Learned from the Study of Sexual Boundary Violations. *Australian and New Zealand Journal of Psychiatry*, 31(3): 321-327.
- Galletly, C. (1993). Psychiatrist-patient Sexual Relationships: The Ethical Dilemmas. *Australian and New Zealand Journal of Psychiatry*, Vol 27(1): 133-139.
- GANZ: Gestalt Australia and New Zealand. *Code of Ethics*. 2009. Retrieved from <http://www.ganz.org.au/pages/ethics081200htm> in 2009.
- Goodrich, K. (2008). Dual relationships in Group Training. *The Journal for Specialists in Group Work*, 33(3): 221-235.
- Gutting, G. (2005). *Foucault. A Very Short Introduction*. Oxford: Oxford University Press.
- Hansen, J. T. (2005). The Devaluation of the Inner Subjective Experiences by the Counseling Profession: A Plea to Reclaim the Essence of the Profession. *Journal of Counseling and Development*, 83: 406-415.
- Hansen, J. T. (2006). Counseling Theories Within a Postmodernist Epistemology: New Roles for Theories. Counseling Practice. *Journal of Counseling and Development*, 84: 291-297.
- Herily, B. & Corey, G. (1992). *Dual Relationships in Counselling*. USA: American Association of Counselling.
- Heatherington, A. (2000). Exploitation in Therapy and Counselling: a breach of professional standards. *British Journal of Guidance and Counselling*, 28: 11-23.
- Hermansson, G. (1997). Boundaries and Boundary Management in Counselling: The never ending story. *British Journal of Counselling*, 25(2): 133- 47.
Retrieved <http://web.ebscohost.com.ezproxy.canterbury.ac.nz/ehost/detail>

- Hill, S. (2003). 'A Citizen Above Suspicion'. *Australian and New Zealand Journal of Family Therapy*, 24(2): 109-111.
- Hook, D. (2007). *Foucault, Psychology and the Analytics of Power. Critical Theory and Practice in Psychology and the Human Sciences*. New York: Palgrave Macmillan.
- Hume, T. (2009, October 4). Paedophile Cop Aided Abuse' at Centrepont. *Sunday Star Times*, p. A4.
- Hume, T. (2010, August 29). Conflicting Interests. *Sunday Star Times*, pp. C1-C3.
- Injury Prevention Rehabilitation and Compensation Act. (2001). Retrieved from <http://brokersonline.co.nz> in 2010.
- Jenkins, P. (2007). *Counselling, Psychotherapy and the Law. Professional Skills for Counsellors*. (2nd ed.). London: Sage.
- Johns, M. (2006). Physical Holding in Psychotherapy. Book Review. *Australian and New Zealand Journal of Family Therapy*, 27 (2): 119
- Jones, C., Shillito-Clarke, C., Syme, G., Hill, D., Casemore, R., Murdin, L. (2000). *Questions of Ethics in Counselling and Therapy*. Great Britain: Cromwell Press.
- Joyce, P. (2002). Focus on Psychiatry in New Zealand. In *British Journal of Psychiatry* 180: 486-470. Retrieved from <http://www.bjp.rcpsych.org/cgi>.
- Kaye, J. (1995). Postfoundationalism and the Language of Psychotherapy Research. (Ed. J. Siegfried). *Therapeutic and Everyday Discourse as Behaviour Change: Towards a micro-analysis in psychotherapy process research*. New Jersey: Ablex Publishing Corporation: pp 29-59.
- Ladson, D. & Welton, R. (2007). Psychotherapy Rounds: Recognising and Managing Erotic and Eroticized Transference. *Psychiatry MMC*, 4(4): 47-50.
- Ludbrook, R. (2003). *Counselling and the Law. For the New Zealand Association of Counsellors*. Hamilton: New Zealand Association of Counsellors.
- Leonardo, Z. (2004). Critical Social Theory and Transformative Knowledge: The Functions of Criticism in Quality Education. *Educational Researcher*, 33: 11-18.
- MacKenzie, S. & Shirlaw, N. (2002). *Mental Health and the Law*. Wellington: Wellington Community Law Centre.

- McCamus, J. D. (1997). Prometheus Unbound. Fiduciary Obligation in the Supreme Court of Canada. HeinOnline. 28 *Canadian Business Law Journal*: 107-140.
- Manthei, R. & Miller, J. (1991). New Zealand Counselling, Therapy and Guidance Related Literature. 1980-1989. A Bibliography. *New Zealand Journal of Counselling*, 13: 35
- Manthei, R. (1991). Content Analysis of the New Zealand Journal of Counselling and Guidance Association Journal, 1976-1990. Vol 1-12. *New Zealand Journal of Counselling*, 13: 12-17.
- Manthei R. (2001) Content Analysis of New Zealand Journal of Counselling. Vol .13-21. 1991- 2000. *New Zealand Journal of Counselling*, 22: 1-12.
- Manthei, R. & Miller, J. (2001). NZ Counselling, Therapy and Guidance Related literature published between 1990 – 1999. A Bibliography. *New Zealand Journal of Counselling*, 22/1: 13-110.
- Manthei, R. (2004). Encouraging Counsellors to Become Active Researchers and Users of Research. *New Zealand Journal of Counselling*: 70–81.
- Manthei, R. (2006) What Clients Tell Us about Seeking Counselling and their Experiences of It? *New Zealand Journal of Counselling*, 2: 59–64.
- Mental Health (Compulsory Assessment and Treatment) Act 1992. Retrieved from <http://brokersonline.co.nz> in 2010.
- Miller, J. (1996). From Unity to Diversity: An account of the growth, development and change in the New Zealand Association of Counsellors as identified through Association newsletters. *New Zealand Journal of Counselling*, 18 (2): 36-49.
- MindFood. (Date and volume unknown). Follow this guide to decide whether seeing a psychologist, psychiatrist or counsellor is right for you. In *MindFood*, p. 57.
- Moleski, S. And Kiselica, M. (2005). Dual Relationships: A Continuum Ranging From the Destructive to the Therapeutic. *Journal of Counselling and Development*, 83: 3-11.
- Monk, G. and Drewery, W. (1994). The Impact of Social Constructionist Thinking on Eclecticism in Counsellor Education: Some Personal Thoughts. *New Zealand Journal of Counselling*, 16(1): 5-13.
- Moreno, J.D. (1962). *Code of Ethics for Group Psychotherapy and Psychodrama. Relationship to the Hippocratic Oath*. New York: Beacon House.

- New Zealand Association of Counsellors. (n.d.) *Code of Ethics*. Retrieved from <http://www.nzac.org.nz>.
- New Zealand Association of Counsellors Newsletter. July, 1991; 12 (1).
- New Zealand Association of Psychotherapy. (n.d.) *Code of Ethics*. Retrieved from <http://www.nzap.org.nz/Pages/ethics.htm> in 2009.
- New Zealand Counselling and Guidance Journal. (1976) Vol 1. No 1. Code of Ethics.
- New Zealand Health and Disability Commission. Retrieved from <http://www.hdc.govt.nz> in 2009.
- New Zealand Law Society. (2008). *Mental Health. Continuing Legal Education*.
- New Zealand Mental Health Commission. Retrieved from <http://www.mhc.govt.nz>
- Nowak, M. (n.d.). *Gag Orders*. http://www.therapyabuse.org/TP_gagorders.htm
- Orlov, E. (2007). 'Psycho-logic' and the Law. *New Zealand Law Journal*: 221.
- Pargiter, R. (1997). Lessons To Be Learned from the Study of Sexual Boundary Violations. *Australian and New Zealand Journal of Psychiatry*, 32(1): 328-329.
- Parker, I. (1999). Deconstruction and Psychotherapy. In I. Parker (Ed.). In *Deconstructing Psychotherapy*. Sage: London.
- Penny, R., Epston, D. & Agee, M. (2008). A History of Marriage Guidance in New Zealand. A Personal Reflection. *New Zealand Journal of Counselling*. 28(2): 1-9.
- Pepper, R. (2007). Too Close for Comfort: The Impact of Dual Relationships on Group Therapy and Group Therapy Training. *International Journal of Group Psychotherapy*, 57(1): 13 -24.
- Pepper, R. (2002). Emotional Incest in Group Psychotherapy. In *International Journal of Group Psychotherapy*, 52(2): 285–195.
- Peters, M. (2001). Michel Foucault. In Ed. M. Palmer, L. Bresler, and D. Cooper (Eds.), *Michel Foucault in Fifty Modern Thinkers on Education. From Piaget to the Present*. (pp. 170-175). London: Routledge.
- Pope, K. (1988). How Clients Are Harmed by Sexual Conduct with Mental Health Professionals. The Syndrome and Its Prevalence. *Journal of Counselling and Development*, 67: 222-226

- Pope, K. & Vazquez, M. (1998). *Ethics in Psychotherapy and Counselling*. California: Jossey-Bass.
- Powers, P. (2007). The Philosophical Foundations of Foucaultian Discourse Analysis. *Critical Approaches to Discourse Analysis across Disciplines*, 1(2): 18-34.
- Prado, C. G. (1995). *Starting with Foucault. An Introduction to Genealogy*. United States of America: Westview Press.
- Psychotherapy and Counselling Federation of Australia. Retrieved <http://www.pacfa.org.au>
- Quardrio, C. (1996). Sexual Abuse in Therapy: Gender Issues. *Australian and New Zealand Journal of Psychiatry*, 30(1): 124-133.
- Re. S (2008). Health Practitioners Disciplinary Tribunal. Retrieved from <http://lexisnexis.com.exproxy.canterbury.ac.nz/legalframe>.
- Riikonen, E & Vataja, S. (1999). Can (And Should) We Know How, Where and When Psychotherapy Takes Place. In I. Parker (Ed.), *Deconstructing Psychotherapy*. London: Sage.
- Rudes, J. & Guterman, J. (2007). Practice and Theory. The Value of Social Constructionism for the Counseling Profession: A Reply to Hansen. *Journal of Counseling and Development*, 85: 387-391.
- Russell, J. (1993). *Out of Bounds. Sexual Exploitation in Counselling and Therapy*. London: Sage.
- Rutter, P. (1989). *Sex in the Forbidden Zone*. New York: Martin Press.
- Sarker, S. (2004). Boundary Violation and Sexual Exploitation in Psychiatry and Psychology. *Advances in Psychiatric Treatment*, 10: 312-320.
- Scheurich, J. & McKenzie, K. (2005). Foucault's Methodologies. Archaeology and Genealogy. In N. Denzin, And Y. Lincoln (Eds.), *The Sage Handbook of Qualitative Research* (pp. 841-868). London: Sage Publications.
- Schoener, G. (n.d.). *Sexual Misconduct By Professionals: Some Historical Perspectives*. Retrieved from <http://therapyabuse.org/papermisconduct.Schoener.htm>, in 2010.
- Seigfried, J. (1995). Introduction. *Therapeutic and Everyday discourse as Behaviour Change: Towards a Micro-analysis in Psychotherapy process research*. New York: Ablex Publishing Corporation.
- Southland Times (1997, 14 July). *Controls Wanted on Counselling*, p. 3.

- Stevens, S. (2003). Where is the Asylum? In K. Disefeld, K and I. Frecklton (Eds.), *Involuntary Detention and Therapeutic Jurisprudence. International Perspectives on Civil Commitment*. (pp. 95-112). England: Ashgate.
- Strong, T. (2002). Collaborative “Expertise” After the Discursive Turn. *Journal of Psychotherapy Integration*, 12(2): 218-232.
- Swan, V. (1999). Narrative, Foucault and Feminism: Implications for Therapeutic Practice. In I. Parker, (Ed.), *Deconstructing Psychotherapy*. London: Sage.
- Syme, G. (2003). *Dual relationships in Counselling and Psychotherapy*. London: Sage.
- Temerlin, M. & Termerlin, J. (1982). Psychotherapy Cults: An Iatrogenic Perversion. *Psychotherapy: Theory, Research and Practice*, 19(2), 131–141.
- Therapy Exploitation Link Line (n.d.). Retrieved: http://www.therapyabuse.org/about_us.htm.
- Thomas, T. (2005). Letter from Acting Health and Disability Commissioner to Mr Dunbar. Proposal that Psychotherapy become a Regulated Profession: 22 February, 2005. Retrieved: <http://www.hdc.org.nz/media/3537>.
- Todd, S. (2005). *The Law of Torts in New Zealand*. (4th ed). (pp. 17 – 54). Wellington: Brookers Limited.
- Todd, S. (1999). Mental Injury and Action for Damages. *New Zealand Law Journal*: 216-220.
- Todd, S. (2004) Tort Actions by Victims of Sexual Abuse. *12 Tort Law Review*, 40.
- “Tougher HDC Line Needed”, (2010, April 7). *New Zealand Doctor Newspaper*. Retrieved from <http://www.nzdoctor.co.nz/inprint>.
- Vasquez, M. (1988). Counselor-Client Sexual Contact. Implications for Ethics Training. In *Journal of Counseling and Development*, Vol. 67(4): 238-241.
- Walker, R. (1990). *Ka Whawhai Tonu Matou. Struggle Without End*. Auckland: Penguin.
- Webb, S. (1997). Training for Maintaining Appropriate Boundaries in Counselling. *British Journal of Guidance and Counselling*, 25(2): 4-19.
Retrieved <http://web.ebscohost.com.ezproxy.canterbury.ac.nz/ehost/detail>
- Weston, T. (2007). Limiting Limitation (2). *New Zealand Law Journal*, June: 169-170.

- Wheeler, A. & Bertram, B. (2008). *The Counsellor and the Law. A Guide to Legal and Ethical Practice*. (5th Ed.) America: American Counselling Association.
- Winslade, J & White, C. (2002). An Analysis of Ethics Complaints to NZAC: 1991-2000. *New Zealand Journal of Counselling*, 23(2): 1-13.
- Wohlberg, J. (n.d.). Sexual Abuse in the Therapeutic Setting. What Do Victims Really Want? Retrieved from <http://www.therapyabuse.org/paperswhatwant.htm> in 2010.
- Wohlberg, J. (n.d.). Healing. Retrieved from http://therapyabuse.org/TP_healing.htm in 2010.
- Woodfield, M. (1982). The Counsellor and the Law. *The New Zealand Counselling and Guidance Association Journal*, 4(1): 7-15.
- Yalom, V. (n.d.) *An Interview with Zerka Moreno, TEP. Psychodrama and Life with J.L. Moreno*. (Retrieved from http://www.psychotherapy.net/interview/Zerka_Moreno).